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No._____

IN THE

Supreme Court of the United States

October Term, 1982

MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES,

Appellant,

and

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, MINNESOTA EDUCATION ASSOCIATION, and NATIONAL EDUCATION ASSOCIATION,

Appellants,

v.

LEON W. KNIGHT, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

APPENDIX TO JURISDICTIONAL STATEMENT OF APPELLANT MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES

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APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

File No. 4-74 Civ. 659

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

ORDER

Before HEANEY, Circuit Judge, ALSOP, District Judge and LARSON, Senior District Judge.

This Court issued its Findings of Fact in the above-captioned matter on November 16, 1981 and its Memorandum Opinion on March 31, 1982. Plaintiffs have filed objections to the findings and conclusions therein and have moved, under Rules 52, 59 and 60, to amend such findings, for relief from judgment and for a new trial. Plaintiffs also have moved for a hearing on the calculation of attorneys' fees to which they may be entitled. Defendants have moved to amend the Court's judgment insofar as it taxes 20 per cent of plaintiffs' costs against the MCCFA and MSBCC. We deny all of these motions.

Defendants' motion to reduce the proportion of costs taxed against them is grounded on their contention that no more than 5-6 per cent of plaintiffs' efforts were expanded on the "meet and confer" issue, the one issue on which plaintiffs prevailed. Plaintiffs have not disputed that the "meet and confer" issue was largely a discrete question of law and fact. Nor have they challenged defendants' assertions that the "meet and confer" issue was addressed in only 3 per cent of plaintiffs' exhibits, 6 per cent of the trial transcripts, .004 per cent of plaintiffs' proposed stipulations and by none of plaintiffs' expert witnesses. Nonetheless, we recognize that there is some overlap between the First Amendment claim as to meet and confer practices and the other practices challenged by plaintiffs. The determination of costs is not a mechanical matter and courts are afforded broad discretion in making such determinations. *Environmental Defense Fund, Inc. v. Callaway*, 497 F.2d 1340, 1342 (8th Cir. 1974). The determination here that the MCCFA and MSBCC shall bear 20 per cent of plaintiffs' costs is a reasonable one and we, therefore, deny the motion to alter that aspect of the judgment.

Plaintiffs' 380 pages of post-trial motions raise numerous detailed issues, nearly all of which were clearly resolved in the Findings of Fact, Memorandum Opinion or other prior rulings of this Court. One claim, for example, is that the findings are false, resting on fraud and "cover-ups" by the defendants. This was raised before the Special Master and was rejected previously by the Master and by this Court. Nothing has been proffered which would give merit to the claim at this stage of the proceedings.

The central objection raised by plaintiffs relates to the conclusion that the defendant labor organizations do not constitute a single, integrated, political-action organization or quasi-

political party. It is asserted that this conclusion rests on a misapplication of the burden of proof, misconstruction of the controlling law, misrepresentation of the record evidence, insufficiently detailed findings and a failure to accept the purportedly "conclusive" opinions of plaintiffs' expert witnesses. Most of these objections are simply an attempt to relitigate the case as a whole, but some clarification may facilitate appellate review of this Court's decision.

The Memorandum Opinion fully sets forth how *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) controls much of the present case. *See* Mem. Op. at 3-7. A major difficulty in this protracted litigation has been the plaintiffs' consistent refusal to acknowledge *Abood* and its impact here. A crucial distinction in *Abood* is whether an exclusive representative's challenged "political" activities are related or unrelated to collective bargaining—only the latter cannot constitutionally be supported by compulsory fair share fees.[1] Here, however, plaintiffs have repeatedly ignored this distinction and in so doing, have obscured the factual issues and the evidence relating thereto. For example, the plaintiffs offered an expert "content analysis" of selected publications which purportedly showed that from 50-100 per cent of the defendants' activities were "political" and did not involve "collec-

[1] This case is not a dispute over calculation of fair share fees, nor does it turn on line-drawing as to activities at the margin of what may be characterized as collective bargaining. When plaintiffs' assertions are viewed in their totality, it becomes clear that under their theory, any private bargaining organization will inevitably constitute an impermissible "political action" organization. Throughout this case, plaintiffs' characterization of MCCFA as a "political" organization has included as a predicate those government-related activities which are inherent in public sector bargaining.

tive bargaining." This analysis rested on subjective judgments which in turn were predicated on the assumption that all "organizing, litigation and lobbying" activities were something separate from "collective bargaining." Apart from other flaws in the content analysis, the fundamental error is the refusal to acknowledge that, consistent with the Constitution, certain organizing and lobbying may be related to collective bargaining and may also, in some broad sense, be deemed "political." Accordingly, the content analysis could be afforded little weight in the face of overwhelming record evidence that the MCCFA is not a quasi-political party but rather is a typical public employee bargaining association.

Plaintiffs' refusal to recognize the effect of *Abood* has needlessly consumed extensive resources. *Abood* squarely upheld the constitutionality of exclusive representation bargaining in the public sector, yet plaintiffs have elaborately developed a theory under which such bargaining is unconstitutional unless the public employees' representative is actually some branch of the government. This theory is frivolous in light of *Abood*, but in any case, could have been fully presented in a cogent manner as a legal question turning on largely undisputed facts. Instead, the development of this theory was muddled with plaintiffs' theory that MCCFA, and probably any public sector union, is the constitutional equivalent of a political party, and was further blurred with repeated incantations that the arrangement under PELRA is the functional equivalent of Italian fascism and the National Industrial Recovery Act. Indeed, the presentation of plaintiffs' case has hindered rather than helped the court to resolve the issues raised in their complaint.

We recognized, however, that important First Amendment interests were implicated and accordingly, placed the burden

upon the defendants to establish that they were not quasi-political parties but instead were public employee bargaining organizations whose activities were predominantly related to collective bargaining. Consideration of this issue was unaided by plaintiffs' insistent and exhaustive attempts to construe as unconstitutional virtually all activity which in any sense may be labeled "political." This again reflects an unwillingness to accept the holding of *Abood*.[2] Notwithstanding this, we closely examined the record as a whole and found that the defendants clearly met their burden. Plaintiffs' contrary assertions at this stage are simply another attempt to litigate matters on which they did not prevail for factual and legal reasons clearly set forth in the Findings of Fact and Memorandum Opinion.

The discussion here should remove any doubt as to the Court's resolution of issues which were also addressed by

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[2] The plaintiffs' post-trial motions in part reveal, for the first time, a nominal recognition that the issue is not whether the MCCFA is predominantly "political," however that may be defined, but whether its activities are predominantly related to collective bargaining, as illuminated in *Abood*. Belated recasting of part of its claim, however, does not change the record evidence nor the only conclusion which is supported by the record. Moreover, plaintiffs' adamant resistance to *Abood* is still reflected in the post-trial assertion that this Court erred by finding the MCCFA to be a "non-political" organization. Whatever the proper definition might be for the term "non-political," no one has contended, and we have never found, that the MCCFA is "non-political." Indeed, as the *Abood* Court noted, the core functions of any public sector union can be characterized as inherently political in some sense of that term. Plaintiffs' true objection is to the holding of *Abood* that exclusive representation bargaining in the public sector is constitutional notwithstanding the inherently political dimension of such activity. Much of the present litigation has been a wasteful attempt to obfuscate and circumvent that clear holding.

plaintiffs' expert witnesses. Plaintiffs insist that the opinion of organizational science experts, political science experts and political economy experts, when unrebutted by similar experts, must be accepted as binding upon the Court. We disagree. The questions addressed by such experts raise factual and legal issues well within the province of any court. The effect of PELRA on "political equality and state sovereignty," for example, is not a question for binding determination by mechanical rules of science, despite plaintiffs' suggestion to the contrary. Whether PELRA is the functional equivalent of any other piece of legislation is similarly a mixed question of law and fact not subject to supposedly dispositive "scientific" testimony. Nor is a "scientific" analogy to fascism binding upon a court. Plaintiffs also emphasize the expert opinion that the defendants constitute an "integrated" entity. The "integration" issue, however, is not a talisman, as plaintiffs would have us believe. The Findings of Fact clearly show certain affiliations between MCCFA and the other defendants and also show that MCCFA independently charts the collective bargaining course it will pursue. Integration is only relevant as it relates to plaintiffs' contention that the defendants are a monolithic "political action" organization, a claim clearly resolved in favor of the defendants. Here again, plaintiffs contend that the opinion of their political science expert is conclusive on the "political action" characterization, notwithstanding that the primary foundation for such testimony, like plaintiffs' case as a whole, utterly fails to account for permissible activity which may in some sense be "political" but which also relates to collective bargaining under the principles of *Abood*.

These expert opinions thus are not binding upon the Court and indeed, in most part were not even helpful to resolution

of the issues presented. Such opinions were given as much weight as appropriate and the weight of the record as a whole explains why they generally were not accepted.

The motions of plaintiffs and defendants are hereby denied. The request of a hearing on attorneys' fees is also denied as premature. Plaintiffs are directed to submit a written request for such fees and defendants are directed to file any objections they may have to such request within thirty days after it is served upon them. The Court will then consider whether a hearing or further submissions may be necessary to its disposition of any fee questions.

GERALD W. HEANEY
United States Circuit Judge
DONALD D. ALSOP
United States District Judge
EARL R. LARSON
U.S. Senior District Judge

Dated: Aug. 13, 1982.

(Caption)

MEMORANDUM OPINION AND ORDER

Before HEANEY, Circuit Judge, ALSOP, District Judge, and LARSON, Senior District Judge.

HEANEY, Circuit Judge.

MEMORANDUM OPINION

Plaintiffs are community college faculty members who challenge the constitutionality of the Minnesota Public Employment Labor Relations Act (PELRA) as applied in the community colleges. Essentially two issues are raised: whether the Minnesota Community College Faculty Association (MCCFA) may act as an exclusive representative under

PELRA, and whether the "meet and confer" provisions of PELRA are valid on their face and as applied. Following extensive proceedings and an independent review of the exhaustive record, we entered findings of fact on November 17, 1981, which are attached hereto. This memorandum opinion incorporates our conclusions of law and order for judgment.

I

MCCFA AS AN EXCLUSIVE REPRESENTATIVE

The structure of collective bargaining under PELRA and MCCFA's role thereunder may be summarized as follows. PELRA provides several mechanisms by which an employee organization may be designated as the exclusive representative of an appropriate bargaining unit. *See* Minn. Stat. § 179.67. The MCCFA is an association of faculty members of the community colleges in Minnesota. It is not disputed that the MCCFA facially qualifies as an employee organization, that community college faculty are an appropriate unit under PELRA,[1] and that the MCCFA was properly certified as an exclusive representative in 1971.

Public employers have an obligation, under PELRA, to "meet and negotiate"[2] with respect to compensation and other "terms and conditions of employment." *Id.*, § 179.66, subd. 2. When an exclusive representative has been certified,

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[1] The certification of community college faculty as a single, statewide bargaining unit was upheld in *Minn. State College Bd. v. Public Employment Relations Bd.*, 228 N.W.2d 551 (Minn. 1975).

[2] The duty to meet and negotiate is defined as:

> the performance of the mutual obligations to meet at reasonable times, including where possible meeting in advance of the budget making process, with the good faith intent of entering into an agreement with respect to terms and conditions of employment; provided, that by such obligation neither party is compelled to agree to a proposal or required to make a concession.

Minn. Stat. § 179.63, subd. 16.

the employer may negotiate only through that representative. *Id.*, § 179.66, subd. 7. The Minnesota State Board for Community Colleges (MSBCC) has negotiated four collective bargaining agreements with the MCCFA since 1971.

Employees are not required by statute to join the MCCFA. Indeed, PELRA expressly provides that employees have "the right not to form [or] join" an employee organization. *Id.*, § 179.65, subd. 2. The contract negotiated by the MCCFA applies to all community college faculty members and its economic benefits flow to all faculty regardless of whether they are members of the MCCFA. PELRA provides that a fair share fee may be collected by an employee organization from nonmember employees that it represents, not to exceed 85% of members' regular dues. *Id.* Such a fee has been collected from plaintiffs by the MCCFA. Determination of the amount of the fee is not in dispute, but we note that PELRA does provide a procedure by which employees may challenge calculation of the fair share fee. *Id.*

The foregoing describes a system of public sector collective bargaining which is common to many states insofar as it applies to traditional subjects of collective bargaining.[3] *See generally*, Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 Mich. L. Rev. 885 (1973). The essential character of such systems is implicated by two claims which the plaintiffs advance here.

A.

Plaintiffs' first contention is that because the MCCFA is a private organization, it holds an impermissible power under PELRA to make "economic laws" and its function constitutes

[3] The "meet and confer" provisions of PELRA fall outside the traditional scope of collective bargaining and are examined *infra* at p. 9.

an impermissible delegation of state sovereignty. Under this theory, only a quasi-state agency—some branch of the public employer—may constitutionally serve as the employee representative. We reject this theory.

The State of Minnesota has not impermissibly delegated its sovereign power. The employer's duty to negotiate under PELRA "does not compel the public employer or its representative to agree to a proposal or require the making of a concession." Minn. Stat. § 179.66, subd. 2. Negotiated agreements with state employees and even arbitration awards must be "submitted to the legislature to be accepted or rejected." *Id.*, § 179.74, subd. 5. Contract terms successfully bargained by the MCCFA have been, in fact, subsequently modified by the state legislature. The state might well find it in its own interest to confer more authority upon its employers or to afford public employees more of the rights held by private employees, but we need not speculate on modifications of PELRA that might occur. It is clear that the present structure under PELRA does not impermissibly abridge the state's sovereign power.

In contending that the legislature's retained authority under PELRA is constitutionally inadequate, plaintiffs rely heavily on *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), and *Schecter Poultry Corp. v. United States*, 295 U.S. 495 (1935). Plaintiffs also rely on these cases for the proposition that PELRA confers upon the MCCFA an impermissible power to make "economic laws."[4] The continuing vitality of *Schecter*

[4] The plaintiffs called several witnesses and devoted extensive time and resources to develop the theory that PELRA is the functional equivalent of both the legislation struck down in *Schecter* and *Carter Coal*, and of the "corporate-state model of Italian fascism." These theories are without merit in light of the controlling principles of *Abood*.

and *Carter Coal*, however, is doubtful at best.[5] Moreover, even if *Schecter* and *Carter Coal* might have some vitality in another context, plaintiffs' reliance on them here is clearly foreclosed by the Supreme Court's decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). *Abood* squarely upholds the constitutionality of exclusive representation bargaining in the public sector.

Abood is central to this case and warrants elaboration. *Abood* involved a public employee bargaining statute similar to Minnesota's PELRA.[6] The plaintiffs in *Abood* were teachers who had not joined the private employee organization which served as their exclusive representative. Like the plaintiffs here, the teachers objected to compulsory fair share fees on First Amendment grounds. The Supreme Court had previously rejected such claims in the private sector, holding that agency shop arrangements were supported by compelling state interests. *See Machinists v. Street*, 367 U.S. 740 (1961); *Railway Employees Dept. v. Hanson*, 351 U.S. 225 (1956). In *Abood*, the Court reaffirmed that exclusive representation

> avoids the confusion that would result from attempting to enforce two or more agreements specifying different terms and conditions of employment. It prevents inter-

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[5] *See e.g., Quincy College v. Burlington Northern, Inc.*, 328 F. Supp. 808, 811 (N.D. Ill. 1971) ("The *Schecter* and *Panama* cases have been severely limited to their own facts"); *Simon v. Cameron*, 337 F. Supp. 1380, 1382 n.1 (C.D. Cal. 1970) (*Carter Coal* "has been distinguished and disregarded in recent years to such an extent that it is believed that the Carter non-delegation doctrine is dead"). *See also*, Davis, Administrative Law Treatise, §§ 3:2, 3:8, 3:12 (1980) ("That the literal opinions in the *Panama* and *Schecter* cases do not embody the effective law is entirely clear").

[6] The Michigan statute at issue in *Abood* provided for designation of an exclusive representative and for collection of fair share fees from employees who were represented by, but not members of, the employee organization. *Abood*, *supra* at 212-215.

> union rivalries from creating dissension within the work force and eliminating the advantages to the employee of collectivization. It also frees the employer from the possibility of facing conflicting demands from different unions, and permits the employer and a single union to reach agreements and settlements that are not subject to attack from rival labor organizations.

Id. at 220-221 (citations omitted).

Moreover, the *Abood* Court reiterated that the agency shop arrangement has been found to "distribute fairly the cost of [collective bargaining] among those who benefit, and it counteracts the incentive that employees might otherwise have to become 'free-riders'—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." *Id.* at 222.

These state policy interests are just as compelling in the public sector. As the Court stated in *Abood, supra* at 224, "[t]he desirability of labor peace is no less important in the public sector, nor is the risk of 'free riders' any smaller." Although the agency shop in the public sector necessarily impacts on First Amendment rights, the *Abood* Court found such concerns outweighed by the compelling state interests in orderly labor relations. *Id.* at 222-223, 229-231.

The *Abood* decision is controlling here.[7] The State of Minnesota has expressly declared that the purpose of PELRA is "to promote orderly and constructive relationships" between public employers and employees and that such a purpose "may best be accomplished" by the bargaining structure provided

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[7] The concurring opinion in *Abood, supra* at 254, 259 n.13, makes clear that the majority holding forecloses the specific claim of plaintiffs here. Even if we were not bound by *Abood*, however, we would reject the plaintiffs' claim for the reasons set forth herein.

under PELRA. Minn. Stat. § 179.61. As the *Abood* Court noted, such a determination by the state is to be afforded great weight in the constitutional balance. *Abood, supra* at 229. Moreover, such a determination rests on a long tradition in Minnesota of recognizing the importance of the agency shop in resolving traditional subjects of collective bargaining. *See e.g.*, Minn. Stat. § 179.16 (providing for exclusive representation in the private sector since the 1940's); *see also*, Note, *Certification of a Bargaining Representative under the Minnesota Labor Relations Act*, 38 Minn. L. Rev. 827 (1954); Note, *History and Provisions of the Minnesota Labor Relations Act*, 24 Minn. L. Rev. 217 (1940). Minnesota may provide for exclusive representation by an employee association in the public sector and may require that nonmembers of the association financially support its collective bargaining efforts through a fair share fee. No constitutional infirmity arises merely because the employee association is a private organization.

B.

Plaintiffs' second contention rests on a factual assertion that the MCCFA, alone and in conjunction with its affiliates, constitutes a quasi-political party or predominantly a political-action organization. The legal claim is that compulsory fair share fees therefore result in forced association with a political party contrary to *Elrod v. Burns*, 427 U.S. 347 (1976), and its progeny. Our resolution of this claim is again guided by the Supreme Court's decision in *Abood, supra*.

The teacher-plaintiffs in *Abood* argued that bargaining activity of a public sector union is inherently political and that compulsory financial support of such activity therefore violates First Amendment associational rights. The Supreme Court acknowledged that "decisionmaking by a public employer is above all a political process," *id.* at 228, and noted

"[t]here can be no quarrel with the truism that because public employee unions attempt to influence governmental policymaking, their activities * * * may be properly termed political." *Id.* at 231. The Court, however, made clear that such "differences between public and private sector collective bargaining simply do not translate into differences in First Amendment rights."[8] *Id.* at 232. Following the precedent set in the private sector,[9] the Court held that public sector unions may collect compulsory fair share fees notwithstanding the "political" character of public bargaining—so long as the fees "are applied to collective bargaining, contract administration, and grievance adjustment purposes." *Id.* at 232. The crucial distinction is union political activity *unrelated* to collective bargaining. The *Abood* Court held that persons opposing such activity may not be compelled to support it through fair share fees. *Id.* at 235-236.

In attempting to show that the MCCFA is predominantly a political action organization, the plaintiffs have persistently ignored the distinction between activities related and those unrelated to collective bargaining. The plaintiffs have instead insisted that activity of the MCCFA which is in any sense "political" must be considered wholly separate from collective bargaining activity.[10] This approach paints with a brush so

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[8] The plaintiffs here argue that allowing a public sector union to be politically active in any respect will confer an unconstitutional political advantage upon public employees. The *Abood* Court acknowledged that public employees might achieve additional influence through political activity. *Id.* at 228. In upholding public sector bargaining and political activity related to such bargaining, the *Abood* Court found no constitutional significance in this "political advantage" theory. Nor do we.

[9] *See Machinists v. Street*, 367 U.S. 740 (1961); *Railway Employees Dept. v. Hanson*, 351 U.S. 225 (1956).

[10] *See e.g.*, findings of fact at 12-13.

broad as to obliterate the distinction that the *Abood* Court found to be crucial for constitutional purposes.

We emphasize that the plaintiffs do not advance a narrow claim that some part of their fair share fees are misused for political activity unrelated to collective bargaining. Calculation of the fair share fee is not in dispute here and we note that there is a statutory procedure for resolving any such dispute.[11] The plaintiffs' claim is that the MCCFA and its affiliates are so overwhelmingly engaged in political activity that they must be deemed to be the equivalent of a political party for constitutional purposes. In light of *Abood*, the factual inquiry turns on whether the activities of MCCFA are related or unrelated to collective bargaining. We have placed the burden on the defendant labor organizations to establish that their activity properly relates to collective bargaining.[12]

Extensive evidence was adduced with respect to the activities of the MCCFA and the other defendant labor organizations, the Minnesota Education Association (MEA), the National Education Association (NEA) and IMPACE (a political action committee affiliated with the MEA). Hundreds of exhibits were introduced by plaintiffs and defendants that relate to the character of activity undertaken by the labor organizations. Numerous staff and officers of the organizations testi-

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[11] *See* Minn. Stat. § 179.65, subd. 2. In a challenge to the fair share fee, the burden is on the employee association to justify the determination of the fee amount. *Id.*

[12] The plaintiffs in a constitutional challenge ordinarily have the burden of establishing that a constitutional violation exists. In *Abood*, however, the Supreme Court indicated a special concern for the difficulty that individual nonmembers of a union would face in attempting to trace and account for the use of their fair share fees. Accordingly, we have placed the burden on the defendants here to establish whether their activities predominantly relate to collective bargaining.

fied as to the extent and character of their political activity. We have independently reviewed the exhaustive record developed before the special master. As our findings indicate,[13] the record establishes beyond any doubt that the MCCFA, MEA and NEA are properly characterized as public employee organizations whose political activities relate closely and directly to collective bargaining.

Plaintiffs devoted extensive time and resources to a theory that the MCCFA, MEA, NEA, IMPACE and NEA-PAC (a political action committee affiliated with the NEA) are a single, integrated organization that functions as a quasi-political party. This theory is without merit as a factual matter. IMPACE and NEA-PAC are indeed political action committees, but even members of MEA and NEA do not automatically give support to these committees. These are independent political action committees organized under state and federal law for the purpose of participating in partisan election contests; membership in and support for IMPACE and NEA-PAC is wholly voluntary. MCCFA is affiliated with MEA and NEA and has derived substantial assistance from the latter two organizations during strikes and other collective actions. The MCCFA, however, independently charts its course of collective bargaining on behalf of community college faculty. Finally, even if MCCFA, MEA and NEA were deemed to be in some sense "integrated," the outcome would not change because each of these organizations is predominantly engaged in activities closely and directly related to collective bargaining.

The MCCFA has engaged in legislative activity virtually of necessity because collective bargaining agreements negotiated by the MCCFA must be submitted to the legislature for approval or rejection. *See* slip op., *supra* at 3. There is simply

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[13] *See* findings of fact at 7-13.

no basis in this record, however, on which the MCCFA could be deemed anything other than a public employee organization whose purpose is to improve through collective bargaining the terms and conditions of employment for the college faculty it represents.

The plaintiffs' claim therefore fails in two respects. To the extent it rests on the notion that a public sector labor organization cannot engage in political activity that relates directly to collective bargaining, it is plainly wrong as a matter of law. To the extent it rests on a factual claim that the MCCFA is predominantly engaged in political activity *unrelated* to collective bargaining, it is flatly contradicted by the record. Such activity is not even a significant, much less a predominant, part of the MCCFA's total activity.

II

MEET AND CONFER

PELRA distinguishes traditional subjects of collective bargaining from all other issues that arise between employers and employees. The traditional matters—compensation and other "terms and conditions of employment—are subject to mandatory bargaining in which employers and the exclusive representative of employees must negotiate in good faith to reach an agreement. *See* Minn. Stat. §§ 179.63, subd. 16, subd. 18; 176.65, subd. 4; 179.66, subd. 1, subd. 2, subd. 7. On all matters not subject to this "meet and negotiate" process, professional employees have the express right to "meet and confer" with their employer. *Id.*, § 179.65, subd. 3. Similarly, PELRA imposes a duty upon employers to meet and confer on such matters with professional public employees. *Id.*, § 179.66, subd. 3.

The state interest underlying the meet and confer process is set forth in the statute:

> The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of public services and which may assist public employers in developing their policies. It is, therefore, the policy of this state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters not specified under [the meet and negotiate provisions].

Id., § 179.73, subd. 1.

As a general matter, the meet and confer concept reflects enlightened labor policy and a legitimate state interest in securing the insight of public employees on questions outside the traditional scope of collective bargaining. There is no constitutional infirmity in requiring public employers to solicit and meaningfully consider the views of public employees.

As applied to higher education, the meet and confer process recognizes and codifies a longstanding tradition of a faculty participation in college governance. In light of this tradition of shared decisionmaking, the state has a special interest in securing the views of faculty members on questions of college governance. No college administrator needs this Court to describe the faculty response to unilateral decisionmaking on issues of importance on campus—the literature in the field is more than sufficient. *See e.g.*, Mayhew, L.B., *Surviving the Eighties*, p. 226 (1979) ("it is really the faculty that grants administrators the mandate to govern, and that mandate can be removed by both overt and covert means"); Ladd & Lipset, *The Divided Academy*, pp. 243-299 (1975); D. Walker, *The Effective Administrator* (1979); H. Mason, *College and University Government*, pp. 44-99 (1972) (suggesting that shared

authority is "the mode of *rapprochement* between bureaucracy and professionalism in institutions of higher education").

Nothing in the Constitution would require that the state abandon what appears to be an essential component of college administration—involving the faculty in a broad range of governance decisions. Thus, no infirmity whatsoever attaches to the threshold meet and confer provisions of PELRA—those which require administrators to meet and confer with faculty and which declare the right of the faculty to meet and confer with administrators. *See* Minn. Stat. §§ 179.65, subd. 3; 179.66, subd. 3.

The state also requires that professional employees select a representative for purposes of the meet and confer process. Minn. Stat. § 179.73, subd. 2. This requirement is separate from the selection of an exclusive representative for purposes of mandatory bargaining.[14] Regardless of whether a bargaining representative has been selected, PELRA requires some selection system for purposes of the meet and confer process. As applied to higher education, this effectively compels the establishment of a faculty governance system to function in the meet and confer process.

The meet and confer committees that presently operate[15] are in fact the exclusive formal governance system for resolving issues outside the scope of mandatory bargaining. The collective bargaining agreement provides, for example, that the

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[14] Minn. Stat. § 179.73, subd. 2, is a one-sentence requirement that is silent as to the method of selecting meet and confer representatives. In contrast, elaborate procedures are set forth elsewhere for selecting an exclusive representative for purposes of collective bargaining. *See* Minn. Stat. § 179.67.

[15] The committees are called "exchange of views" committees at the local campus level and "meet and confer" committees at the statewide level. Use of the term "meet and confer" herein refers to both levels of committees.

meet and confer committees "will have full authority in the assigned area to present the views of the employees * * *." The testimony of college administrators confirms that, although persons may still express their individual views outside the formal process, the "official" view of the faculty is the position adopted by the meet and confer committees. Thus, the weight and significance of individual speech interests have been consciously derogated in favor of systematic, official expression. On any issue that has campus-wide impact, it is difficult to imagine that isolated individual views would have any weight when compared to the "official" view of the faculty. If some faculty members are excluded from participation and deliberation in the meet and confer process, they are effectively denied any meaningful expression on the issues resolved through that process.

The subjects considered by meet and confer committees at the community colleges have included the college budget, curriculum reviews, new course proposals, college organization and campus facilities. Moreover, the scope of the meet and confer process in community colleges sweeps across all issues in college governance that are not subject to mandatory bargaining. These issues in higher education have a special character as a matter of tradition, public policy and constitutional law.

Traditionally, the subjects of meet and confer have been resolved through governance systems in which all faculty members have an opportunity to participate. In the present case, governance at community colleges prior to passage of PELRA consisted of faculty senates and committees, selected through elections in which every faculty member was eligible to both vote and seek election.

Public policy supports the tradition of participation by all faculty members. The free and full exchange of ideas lies at

the core of academia's contribution to our society. To protect these values, our society has attempted to insulate institutions of higher education from the orthodoxies of life outside the campus—be they commercial, religious or political orthodoxies that might inhibit the marketplace of ideas.

The right of expression by faculty members also holds a special place under our Constitution, as the Supreme Court has broadly declared. In *Keyishian v. Board of Regents of New York*, 385 U.S. 589, 603 (1967), the Court stated:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment.

In *Shelton v. Tucker*, 364 U.S. 480, 487 (1960), the Court emphasized that "[t]he vigilant protection of constitutional freedoms is no where more vital than in the community of American schools." Similarly, in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), the Court declared:

> The essentiality of freedom in the community of American universities is almost self-evident. * * * To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.

These cases do not directly control the present matter,[16] but they illustrate that the First Amendment has a special significance in higher education. The vital concern for academic freedom warrants a heightened standard of scrutiny when, as here, the state regulates the forum for academic speech.

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[16] The issue here is whether faculty members may be excluded from participating in selection of meet and confer representatives and from serving as such representatives, which is a question of first impression.

We must weigh these constitutional values against the state interest in making the meet and confer process an orderly one. The state has provided that the right to meet and confer may only be exercised through selection of representatives in a governance system. It vigorously contends that requiring some selection process is essential if the meet and confer process is to be effective. We are inclined to agree. Absent such a requirement, administrators in the community college system would be expressly compelled to meet regularly[17] with each faculty member and group of members that desired to so confer. The result could well be that no meaningful faculty expression would emerge and that both faculty and administrators would be deprived of the benefits from an orderly, systematic exchange of views.

We cannot ignore, however, that the state has created a forum for the exchange of views between faculty and administrators on all issues outside the scope of mandatory bargaining. The meet and confer process may not be a general public forum,[18] but it is an important academic forum. Indeed, it is the only significant forum for the faculty to resolve virtually every issue outside the scope of mandatory bargaining. This structure effectively blocks any meaningful expression by faculty members who are excluded from the formal process. If the state is going to intervene in this manner, we think it must afford all faculty members a fair opportunity both to

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[17] PELRA requires that formal meet and confer sessions be held at least three times a year. *See* Minn. Stat. § 179.73, subd. 2. The spirit and practice, however, have been to meet more often than this, generally on a monthly basis.

[18] If the meet and confer sessions were a public forum, an absolute free speech right would attach in terms of access to that forum. *See City of Madison v. Wisc. Empl. Comm.*, 429 U.S. 167 (1976). *See also*, Finkin, *The Limits of Majority Rule in Collective Bargaining*, 64 Minn. L. Rev. 183, 245-249 (1980).

serve as and to participate in the selection of meet and confer representatives. Thus, Minn. Stat. § 179.73, subd. 2, which requires faculty members to select such representatives, is constitutionally valid so long as every faculty member is afforded a fair opportunity to participate in the selection process.

We emphasize the narrowness of this holding.[19] We are not confronted with a faculty governance system developed independent of state compulsion, which would present different considerations. We are not confronted with ad hoc committees or other temporary governance mechanisms which might present special needs for expediency. Nor have we yet addressed what role a faculty union might play in a governance system. We hold only that when the state compels creation of a representative governance system in higher education and utilizes that forum for ongoing debate and resolution of virtually all issues outside the scope of collective bargaining, it must afford every faculty member a fair opportunity to participate in the selection of governance representatives.[20]

The State of Minnesota has gone one step further in structuring the meet and confer process. PELRA provides that the employer may meet and confer "only through the exclusive representative," if there be one. *See* Minn. Stat. § 179.66, subd. 7. Pursuant to this provision, the collective bargaining contract confers upon the MCCFA the sole authority to select the

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[19] This holding, of course, applies only to higher education.

[20] Selection of the present meet and confer committee members, for example, might be conducted under MCCFA auspices in fully open elections—such that members and nonmembers of MCCFA could both vote and seek election. We could not find that such a system deprived anyone of a fair opportunity to participate. To precisely define "fair opportunity," however, would require that we speculate on governance structures that are not before us. We decline to do so.

meet and confer representatives. The MCCFA has held this exclusive power since the passage of PELRA, and has exercised it to exclude nonmembers of the MCCFA from serving on the meet and confer committees.

This practice of systematically excluding nonmembers of the MCCFA obviously deprives such persons of a fair opportunity to participate in the meet and confer process. It also infringes the First Amendment associational rights of faculty members who do not desire to join the MCCFA.

Moreover, the MCCFA's exclusive authority to select the committee representative—regardless of how it is actually exercised—inherently creates a chilling effect on the associational and speech interests of faculty members. The scope of the meet and confer committees reaches many issues that are integral to the professional function of a college professor. If one risks exclusion from these committees by not joining in or speaking out against the MCCFA, it seems self-evident that one's freedom not to join or to so speak out is seriously impaired. This risk of exclusion is inherent in the MCCFA's sole authority to select the committee members. The actual practice only bears out that the risk of exclusion is a real one.

Because these effects infringe fundamental First Amendment guarantees, the MCCFA's exclusive selection authority can be upheld only if it is supported by compelling, legitimate state interests which cannot be furthered by less intrusive means. We find no such interests here.

The state does not contend that it has a legitimate interest in excluding nonmembers of the MCCFA from serving on meet and confer committees. Indeed, the state interest expressly underlying the meet and confer process—obtaining the views of employees on matters outside the scope of collective bargaining—argues for hearing the views of all employees not just

those that are union members. The state does contend that the meet and confer process must be an orderly, systematic one, but this interest can be fully served without excluding nonmembers of the MCCFA. The process would be no less orderly, for example, if both members and nonmembers of the MCCFA participated in electing committee members.

The core issue is whether the rationale for the agency shop in traditional collective bargaining applies with the same force to the meet and confer process in higher education. We think it does not.

A fundamental element of the agency shop rationale is that, absent collective representation, the employees as a whole could not effectively participate in decisions that are the subject of representation. This, indeed, is a key factor in making union security a legitimate interest of the state. In higher education, however, faculty members have long enjoyed substantial formal and informal participation in college governance—present here in the form of faculty senates prior to PELRA. Such a tradition of shared decisionmaking has not been generally true in other areas of employment or even at other levels of public education. In these other contexts, the state may properly seek to balance labor relations by providing the strongest possible role for a union, but the same state interest is simply not as strong in higher education. If college administrators excluded faculty from matters of governance, there would be a more compelling justification for exclusive union control of faculty governance selection.

Another crucial factor involves the largely economic, tangible nature of traditional collective bargaining. Joining a union cannot constitutionally be made a condition of employment and it is thought that because the tangible benefits of bargaining flow to both members and nonmembers alike, no coercion

to join will result in practice. The subjects of meet and confer, however, are generally intangible issues of governance, such as curriculum proposals and academic standards. It simply cannot be said that the benefits of conferring on such issues flow equally to persons who are excluded from conferring. Indeed, the record shows that at least one faculty member joined the MCCFA because he considered participation in the meet and confer process essential to his particular position. Several others also testified that they considered such participation to be an essential part of serving on the faculty. This is precisely the kind of impermissible "joining as a condition of employment" which results from the unique character and tradition of governance in higher education. It does not result, however, from exclusive representation on matters within the traditional scope of collective bargaining because the tangible fruits of such bargaining flow to all employees regardless of whether they are members of the labor organization.

A third factor involves the union's legitimate need for security, which is generally promoted by excluding rival unions from representing segments of the same bargaining unit and by requiring nonmembers of the union to pay their fair share of the costs of collective bargaining, contract administration and grievance processing. Union security will not be jeopardized by allowing nonmembers of the MCCFA to participate in selection of meet and confer representatives. The MCCFA remains the exclusive representative for all matters subject to the mandatory bargaining provisions. No rival unions could simultaneously represent community college faculty. The MCCFA continues to have sole control over mandatory bargaining, contract administration and grievances. It continues to collect fair share fees from nonmembers

to defray the costs of such efforts. No one therefore gets a free ride on the important efforts expended in these areas.

Another factor in the agency shop rationale is that, absent such a system, the employer would be subject to irreconcilable conflicting demands from rival unions. Much of this concern arises because the employer is under a mandatory duty to bargain. Here, however, the mandatory bargaining process remains under the sole control of the MCCFA. In no event would the employer be forced to bargain with more than one group.

The subject matter of meet and confer committees and the scope of mandatory bargaining are mutually exclusive. Of course, it is difficult to draw a line between the two jurisdictions, but this is inevitable unless all issues are subject to just one process or the other. This line drawing has already reached the Minnesota Supreme Court three times since PELRA was enacted. *See General Drivers Union Local 346 v. Ind. Sch. Dist. No. 704*, 283 N.W.2d 524 (Minn. 1979); *Mpls. Fed. of Teachers v. Mpls. Special Sch. Dist. No. 2*, 258 N.W.2d 802 (Minn. 1977); *Int'l Union of Operating Engineers v. City of Mpls.*, 233 N.W.2d 748 (Minn. 1975). Although there may be an added dimension to the line drawing if the meet and confer committees are open to nonmembers of the MCCFA, the line drawing itself is essentially unchanged. The question remains one that frequently arises in labor law—whether a particular issue is subject to mandatory bargaining.

We thus conclude that the rationale which properly supports the agency shop generally does not justify the MCCFA's sole authority to select meet and confer representatives in the community colleges.

The MCCFA contends that the present practice is not different in any material way from the faculty senate system which preceded PELRA. The argument is that majority selec-

tion of a labor organization is the equivalent of majority selection of a faculty senate. Despite its superficial appeal, this contention glosses over constitutional differences between the two systems. The plain fact is that all faculty members formerly had the right to vote for individual representatives that would deal with issues of college and faculty governance. All faculty members could also seek to serve in such roles. These rights are now completely lost unless one joins the MCCFA. The right to even speak out on such issues is further impaired by the knowledge that one could be excluded from serving in the process if the MCCFA should desire to retaliate for protected speech activity. The former faculty senate system did not impair these First Amendment interests, interests which are paramount in the context of higher education.

We hold that the First Amendment interests of faculty members are infringed if the labor organization has sole authority to select meet and confer representatives and that such infringement, in the context of higher education, is not supported by overriding state interests.[21] The contract provision establishing such exclusive selection is therefore void and section 179.66, subd. 7, of PELRA is declared unconstitutional insofar as it requires or allows such a practice in the meet and confer context.

In so holding, we do not suggest that a labor organization cannot play a major role in the meet and confer process. To the contrary, the state has an obvious interest in harmonizing the meet and negotiate process with the meet and confer process. Moreover, the MCCFA, as the representative of a majority of the faculty, has a legitimate claim to a significant role in the meet and confer process. If, for example, the pres-

[21] Nothing in our holding should be viewed as if it also applies outside the context of higher education.

ent structure were operated under the auspices of the MCCFA, but committee memberships were open to and elected by all faculty, including nonmembers of the MCCFA, legitimate state interests could be served without the constitutional impairments of the present system.

We again emphasize the narrowness of our holding. We are not confronted with a faculty union's role in ad hoc governance mechanisms which might arise from time to time. The need for administrative expedience and potential for impairment of associational rights might well lead to a different result. We will not speculate, however, on the constitutionality of governance mechanisms that are not before us.

III

SUMMARY

1. The Minnesota Community College Faculty Association (MCCFA) may act as an exclusive representative pursuant to PELRA, Minn. Stat. § 179.61 *et seq.*

(a) The provisions of PELRA that allow for an exclusive representation system of collective bargaining and that impose duties to "meet and negotiate" with respect to compensation and other terms and conditions of employment are constitutionally valid on their face and as applied in the community colleges;

(b) No constitutional violation arises from the MCCFA's status as a private organization. PELRA, on its face and as applied, does not impermissibly delegate sovereign state power nor impermissibly confer any power to make "economic laws;"

(c) No constitutional violation arises from the MCCFA engaging in limited political activity which relates directly to its collective bargaining efforts. MCCFA's function as an exclusive representative under PELRA does not result in any compelled association with a quasi-political party. The

MCCFA and the organizations with which it is affiliated (The Minnesota Education Association and National Education Association) do not together constitute a single integrated organization nor are they, alone or in conjunction, a quasi-political party.

2. The present practice of having the MCCFA select all representatives on meet and confer committees is unconstitutional. Such practice has an inherent chilling effect on the associational and speech interests of nonmembers of the MCCFA and, unlike exclusive control over the "meet and negotiate" process, is not supported by compelling state interests.

(a) The meet and confer provisions of PELRA are valid insofar as they impose upon employers the duty to meet and confer and provide employees the right to meet and confer. Nothing in the Constitution requires that the state abandon what appears to be essential in college administration—involving the faculty in college governance;

(b) The provisions requiring employees to select meet and confer representatives, Minn. Stat. § 179.73, subd. 2, as applied to the community colleges, effectively requires and has resulted in the establishment of a formal governance system which is the primary mechanism for expressing faculty views on all issues outside the mandatory bargaining process. This provision is valid as applied to community colleges only if all faculty members have a fair opportunity both to select and serve as governance representatives.

(c) The clause of the collective bargaining contract which gives the MCCFA sole authority to select meet and confer representatives is void, and the statutory provision which requires the employer to meet and confer only through such organization is invalid insofar as it allows or requires the present practice. *See* Minn. Stat. § 179.66, subd. 7.

(d) The foregoing would not preclude conducting the meet and confer process under the auspices of the MCCFA, so long as both members and nonmembers have a fair opportunity to select and serve on the meet and confer committees.

ORDER FOR JUDGMENT

The constitutional infringements caused by the present meet and confer process in the community colleges clearly occur under color of state law. The Minnesota State Board for Community Colleges, in its official capacity, and the Minnesota Community College Faculty Association must equally share liability inasmuch as they together negotiated the aspects of the present structure which we have found violate plaintiffs' constitutional rights. There is no basis for individual liability or for finding any defendants liable other than the MSBCC and the MCCFA.

The parties have stipulated to nominal money damages of one dollar and we find that no other money damages are appropriate. The plaintiffs are entitled to declaratory and injunctive relief in accordance with this opinion. Therefore, PELRA as applied to the community colleges is declared valid in all respects, except

(1) Minn. Stat. § 179.73, subd. 2, is declared valid so long as all community college faculty members are provided a fair opportunity both to select and serve as meet and confer representatives;

(2) Minn. Stat. § 179.66, subd. 7, is declared unconstitutional only insofar as it allows or requires an exclusive representative in the community colleges to have sole authority to select meet and confer representatives;

(3) The clause of the collective bargaining contract conferring sole selection authority upon the MCCFA is declared invalid, and the MCCFA is enjoined from making any further

selections of meet and confer representatives pursuant to such clause.

The defendants shall bear their own costs in this proceeding and 20% of plaintiffs' costs shall be taxed to the MSBCC and the MCCFA, to be borne in equal shares.

Judgment shall be entered in accordance with this order.

GERALD W. HEANEY
United States Circuit Judge

DONALD D. ALSOP
United States District Judge

LARSON, Senior District Judge, concurring and dissenting.

I am in substantial agreement with the Memorandum Opinion and Order but dissent as to paragraphs (1), (2), and (3) in the Order for Judgment.

EARL R. LARSON
U.S. Senior District Judge

Dated: March 30, 1982.

(Caption)

FINDINGS OF FACT AND ORDER

Pursuant to the Order of this Court dated December 13, 1979, the parties have presented extensive evidence before Special Master Leonard E. Lindquist. Proceedings before the Special Master involved 41 hearing days, 6,000 pages of transcript, the introduction of over 500 exhibits and the filing by each party of various briefs and elaborate proposed findings of fact. The Special Master filed his recommended findings of fact with this Court on March 13, 1981.

The following constitutional issues remain for this Court to determine:

(1) Whether it is constitutional, under the First and Fourteenth Amendments, for the Minnesota Community College

Faculty Association (MCCFA) to act as "exclusive representative" of plaintiffs pursuant to the collective bargaining provisions of the Minnesota Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179.61 *et seq.*; and

(2) Whether the "meet and confer" provisions of PELRA, Minn. Stat. §§ 179.63, subd. 15, 179.65, subd. 1, and 179.66, subd. 3, 7, are constitutional on their face and as applied to plaintiffs under the First and Fourteenth Amendments.

Before adopting findings of fact, we carefully reviewed the trial record, the stipulations of fact, the parties' proposed findings of fact and the briefs in support thereof. The findings herein represent our independent judgment based upon that review.

In making these findings, we have allocated the burden of proof as follows: plaintiffs must establish that exercise of a specific constitutional right is impaired by the challenged statute or practice and that such a right is deemed a fundamental one. If plaintiffs meet this burden, the defendants must then demonstrate that there is a compelling legitimate state interest served by the challenged statute or practice which outweighs the impairment of the protected right, and that no less restrictive means are reasonably available to pursue such compelling interest.[1] *See generally Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Elrod v. Burns*, 427 U.S. 347 (1976).

Based upon the foregoing, the Report of the Special Master is adopted as modified and set forth herein.

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[1] As to plaintiffs' claim that defendant labor organizations are predominantly political in character, we have placed the burden upon the defendants to show that their activities predominantly relate to collective bargaining. *See Abood v. Detroit Board of Education*, 431 U.S. 209, 239 n.40 (1977); *cf.* Finkin, *The Limits of Majority Rule in Collective Bargaining*, 64 Minn. L. Rev. 183, 241-249 (1980).

I. PARTIES

1. Plaintiffs are residents of Minnesota, "public employees" under Minnesota law,[2] and are employed by the Minnesota State Board for Community Colleges (MSBCC) as follows:

a. Leon Knight and Morgan Kjer are faculty members of North Hennepin Community College, located in Brooklyn Park, Minnesota;

b. James D. Wallace, Terrence D. Florin, Harold J. Gardner, Eugene D. Mielke, Joan M. Farkas and Ronald Lievense are faculty members of Normandale Community College, located in Bloomington, Minnesota; and

c. Ralph G. Powell and Cresston Gackle are or were faculty members at Anoka-Ramsey Community College, located in Coon Rapids, Minnesota.[3]

2. Plaintiffs are represented collectively in the negotiation of collective bargaining agreements, grievance adjustment, and arbitration issues in dispute with MSBCC by defendant Minnesota Community College Faculty Association (MCCFA) which is certified as their exclusive representative pursuant to PELRA. Minn. Stat. § 179.61 *et seq.*

3. Certain of the plaintiffs are not and do not desire to become formal members or supporters, financial or otherwise,

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[2] *See* Minn. Stat. § 179.63, subd. 7.

[3] The defendant labor organizations assert, and the plaintiffs have not challenged, that the following plaintiffs are no longer employed as community college faculty members: William B. Bauman, Thomas J. Patin, Dr. Richard A. Thompson, Gary Nelson, Lucille Johnson, Virginia Lanegran and Richard Isenhart. In addition, three plaintiffs, Donald A. Dahlin, David R. Grout and Max A. Malmquist, had previously expressed a desire to withdraw their participation in the case, which request was denied together with other matters in this Court's Order dated April 24, 1980. The plaintiffs' proposed findings did not include these three persons as identified plaintiffs.

of defendants[4] MCCFA, Minnesota Education Association (MEA), Independent Minnesota Political Action Committee for Education (IMPACE) or National Education Association (NEA), nor do they desire to be represented either individually or collectively by said organizations with respect to terms and conditions of employment, other personnel or educational policies subject to the "meet and confer" provisions of PELRA, or any other matter in which defendant labor organizations are involved.

4. Defendant labor organizations are the MCCFA, MEA, NEA and IMPACE, the structures of which are described *infra* at pp. 4-7.

5. Defendant state officials are as follows:

a. The Minnesota State Board for Community Colleges (MSBCC) is an agency of the State of Minnesota, a "public employer" under PELRA, and is responsible for managing the public community colleges of Minnesota, including those which employ plaintiffs;

b. Phillip C. Helland is the chancellor of the community college system and is the chief executive officer of the MSBCC;

c. Dale A Lorenz is the president of Normandale Community College, John Helling is the president of North Hennepin Community College;

d. The Minnesota State Treasurer and Commissioner of Finance are involved in the implementation of PELRA for purposes of this action only to the extent that their duties include withholding "fair share fees" from employees' wages and transmitting such fees to the exclusive representative; and

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[4] The following plaintiffs are presently members of the MCCFA: Harold J. Gardner, Eugene D. Mielke, Joan M. Farkas and Crosston Gackle. Ralph G. Powell has become a faculty member at Minneapolis Community College and thereafter joined the MCCFA.

e. The director of the Bureau of Mediation Services' only involvement in this action was his certification of the MCCFA as the exclusive representative of the bargaining unit in 1971 and his subsequent refusal to change that certification in 1974.

II. STRUCTURE AND ACTIVITIES OF DEFENDANT LABOR ORGANIZATIONS

A. Structure

1. *NEA.* NEA is a national voluntary organization of teachers, governed by its Representative Assembly, Board of Directors and Executive Committee, that has both state and local affiliates. Through reciprocal membership requirements as a condition of affiliation, members of a local or state affiliate must become members of the NEA and of both the state and local affiliates.

The principal policymaking body of the NEA is its Representative Assembly, comprised of members of the national, state and local associations. NEA's program budget, constitution, bylaws and standing rules, and resolutions with respect to issues and goals are all voted upon by the Representative Assembly. It also elects the president, vice president, secretary, treasurer, at-large members of the Board of Directors, and the at-large members of the Executive Committee.

Only the NEA may amend its constitution and bylaws, which are separate from those of MEA or MCCFA. The NEA is the exclusive employer of its professional staff and such staff are not subject to supervision by any staff of MEA or MCCFA. No state or local affiliate has any authority over any collective bargaining agreement entered into by the NEA with its professional staff. NEA sets its own budget and no affiliate has authority to interfere with such determinations.

2. *MEA*. The MEA is a statewide voluntary organization of teachers that operates under the direction of its own Representative Assembly, Board of Directors and Executive Committee, all of which are separate from the representative or delegate assemblies, boards and committees of the NEA and MCCFA. The MEA has divided the state into various geographic regions and other units known as UniServ units, each of which serves one or more local associations. Every UniServ unit, including the MCCFA, is entitled to representation on the MEA's Board.

MEA has its own constitution and bylaws, which it alone may amend. Such amendment does not require approval by the NEA or any local affiliate.

MEA's staff operate under the direction of MEA's executives and is separate from the staff of NEA and MCCFA, although some MEA staff may be assigned to assist affiliates, including MCCFA.

MEA's boards, committees and assemblies determine its program budget and other expenditure decisions, without any power of review by the NEA or local affiliates.

3. *MCCFA*. The MCCFA is a voluntary organization of community college faculty members operating under the direction of its own Delegate Assembly, Board of Directors and Executive Committee. As an affiliate of the MEA and NEA, MCCFA requires its members to become members of MEA and NEA.

MCCFA's relationship with the NEA and MEA is set forth in the affiliation agreement between these organizations. Under this agreement, MCCFA members pay "unified dues" to the MCCFA, MEA and NEA. The dedication of a portion of such dues to MEA and NEA is in exchange for staff, office and other assistance to MCCFA. Extensive evidence was sub-

mitted with respect to accounting for the budgets and allocations between the organizations. The evidence established that at least 75% of MCCFA member dues are expended by or on direct behalf of MCCFA. The portion allocable to the MCCFA is higher if regular indirect MEA and NEA assistance, or emergency aid such as strike assistance, is included.

The authority of MCCFA to maintain the autonomy specified under its constitution, to conduct its own meetings, to elect its own officers and to adopt its own policies, are also provided for in the affiliation agreement.

MCCFA's constitution and bylaws are separate from those of MEA and NEA. MCCFA's by-laws may be amended only by its membership. MCCFA's board of directors, officers and member assemblies are all separate from those of MEA and NEA.

MCCFA alone determines the scope, content, subject matter and direction of its collective bargaining with the MSBCC. NEA and MEA have no authority to determine or participate in the determination of such matters by MCCFA.

4. *IMPACE.* IMPACE is a voluntary, nonprofit committee of individual educators which may be characterized as MEA's political action arm. Its Board of Directors are appointed by the MEA Board of Directors. The IMPACE board exercises general supervision and control of its organization, including all determinations of financial contributions to the campaigns of candidates for public office in Minnesota.

Membership in and contributions to IMPACE are wholly voluntary and distinctly separate from membership in or contributions to MEA, NEA or MCCFA.

IMPACE has sole authority over its funding decisions and other activities. IMPACE contracts and pays for the services of certain MEA staff members together with paying MEA

for IMPACE's office space and other support services. IMPACE has no authority to participate in or exercise influence over budget, program, collective bargaining or other regular operations of NEA, MEA or MCCFA.

5. *NEA-PAC.* NEA-PAC is not a defendant. It is a national voluntary, nonprofit committee of teachers which may be characterized as NEA's political action arm. It is governed by its own Steering Committee which determines which campaigns of candidates for federal office shall receive financial contributions. The NEA-PAC Steering Committee and NEA officers and directors are separate entities. IMPACE Chairman, Roger Johnson, is a member of the NEA-PAC Council by virtue of his IMPACE chairmanship.

Membership in or contribution to NEA-PAC is wholly voluntary and distinctly separate from membership in or contribution to NEA, MEA or MCCFA.

NEA-PAC has no authority to participate in or exercise influence over budget, program, collective bargaining or other regular operations of NEA, MEA or MCCFA.

6. *INTERRELATIONSHIPS.* In limited circumstances, NEA, MEA, MCCFA, NEA-PAC and IMPACE provide to or share with one another various services and facilities. Such sharing of services, facilities or staff is generally financed by each separate organization to the extent such organization directly benefits from the particular sharing arrangement. Officials, staff personnel and representatives of NEA, MEA, MCCFA, NEA-PAC and IMPACE regularly attend meetings with one another, plan certain cooperative programs, report to their respective organizations concerning the activities of the other organizations, and maintain continuous channels of communications among themselves. In special cases, the degree of support for an affiliate may be quite substantial (*see* p. 10, *infra*, regarding strike assistance).

MCCFA, MEA and NEA are related by their agreement of affiliation, by having certain common goals and by occasional sharing arrangements. They are not and do not function or operate, however, as a single integrated unit. In making this finding, we have considered the testimony of Professors Schneier and Morgan, presented by plaintiffs, and the record as a whole. Each organization has a separate board of directors, officers, committees, constitution and bylaws. Each organization maintains exclusive control over its budget, program activity and general policy-setting process. Each organization maintains separate and exclusive control over its professional staff and management operations. Each organization maintains separate and exclusive control over its collective bargaining determinations. The record thus shows that MCCFA, MEA and NEA are not a single integrated organization. The record also establishes that IMPACE and NEA-PAC are separate political action committees of MEA and NEA, respectively. Because membership in or contribution to IMPACE and NEA-PAC are wholly voluntary and separate from any participation in MCCFA, MEA or NEA, IMPACE and NEA-PAC are also not part of any single integrated organization.

B. General Activities of Defendant Labor Organizations

1. *MCCFA.* Since 1971, MCCFA has been the certified exclusive bargaining agent for the faculty of Minnesota's community colleges. MCCFA was actively engaged for over a year negotiating the 1973-75 collective bargaining contract with MSBCC. This accord was reached without strike or arbitration. The 1975-77 and 1977-79 contracts were also negotiated by MCCFA for approximately one year each; both resulted in arbitration proceedings and awards; and, in both cases, the Minnesota Legislature failed to fully fund the arbitration

award. MCCFA also negotiated the 1979-81 contract for nearly a year. In this case, a three-week strike resulted from a refusal by MSBCC to arbitrate the dispute.

The subject matter of these negotiations by MCCFA has included teaching loads, work assignments, salaries, leave policies, grievance procedures, seniority rights, fringe benefits, grounds for dismissal and the scope of arbitration.

Roughly one-half of MCCFA's annual budget is expended on the costs of operating its 22-person Board of Directors, its Executive Committee and the salary of its president. The president chairs meetings of the Board and Executive Committee, which take place at least monthly; appoints members and serves as an ex officio member of standing committees (Negotiations Committee, Meet and Confer Committee, Legislative Committee, Professional Growth Committee, Resolutions Committee and others); chairs the negotiation teams and serves generally as the chief spokesperson of MCCFA.

The MCCFA Executive Director is salaried by the MEA, pursuant to the affiliation agreement, but is primarily involved in grievance of MCCFA claims, MCCFA contract interpretation and negotiations and other MCCFA matters.

Roughly one-fifth of the MCCFA budget is expended on its committee activities in such areas as negotiations, meet and confer, legislative matters and professional growth.

The testimony and exhibits relating to MCCFA activities clearly establish that nearly all such activities relate directly to collective bargaining, formulation of a bargaining position, contract administration or closely related organizational and professional growth.

2. *MEA*. MCCFA is affiliated with MEA, a statewide organization of local teacher affiliates that represent more than half of the public school teachers in Minnesota.

MEA assists its affiliates in virtually all areas in which they are active. MEA has departments (paid staff of MEA) and councils (volunteer teacher members who receive only expenses) in the following areas, on which well over half of the MEA budget is expended: Negotiations, Teacher Rights, Field Services (including UniServ), Instructional and Professional Development, Communications, Economic Services, and Governmental Relations. The activities of these departments and councils include training of teachers in grievance procedures, legal defense or promotion of teacher rights, research and consultation on the broad range of subjects treated in negotiations, consultation on arbitration matters, investigation of unfair labor practice charges, direct field staff assistance to local affiliates in all of the foregoing areas, researching and organizing teacher education programs dealing with classroom skills and other professional development, and assembling insurance, travel and other group benefits. Roughly one-third of MEA's budget is expended on administration, governance and physical facilities, including offices, equipment, officer salaries and costs of Board meetings and Representative Assemblies.

The testimony and exhibits relating to MEA activities clearly establish that all but an insignificant portion of such activities relate directly to collective bargaining issues such as teacher salaries, fringe benefits, size of classes, job security and other aspects of teacher welfare.

The MEA directly assisted the MCCFA during the latter organization's 1979 strike action. MEA granted MCCFA $200,000 to maintain strike facilities, paid $100 per week to striking faculty members after the tenth day of the strike, and, together with NEA, guaranteed approximately $300,000 in loans to the strikers. This strike aid alone exceeded three years of MCCFA dues to MEA.

3. *NEA*. The NEA is a national teacher organization which engages in a variety of activities aimed at promoting public education, teacher welfare and improving the bargaining ability and position of its members and affiliates.

The overwhelming majority of NEA's budget expenditures relate to training teachers in grievance procedures, professional growth and skill development of teachers, technical management and other organizational assistance to its affiliates, extensive research support relating to collective bargaining issues, and direct assistance to affiliates engaged in collective bargaining.

C. Political Activity of Defendant Labor Organizations

1. NEA-PAC and IMPACE are political action arms of NEA and MEA, respectively. NEA-PAC makes contributions to the campaigns of federal candidates, and IMPACE makes contributions to state and local candidates. The funds for such contributions are independent of dues-money and are raised through separate voluntary contributions, primarily from teachers.

2. There is some overlap of NEA-PAC activity with regular NEA organizational activity and staff, and some NEA political activity that may be only incidentally related to collective bargaining. The NEA has a rebate procedure which refunds, to each member who desires, the portion of regular dues expended on political activity which does not bear directly on collective bargaining, grievance procedures and teacher welfare. Rebated costs include those related to any overlap with NEA-PAC, the preparation or dissemination of candidate ratings or any other indication of candidate preference, certain ideological or charitable activity, and other lobbying not related directly to collective bargaining or terms and conditions of employment. The rebatable amounts, as determined by

NEA, have always aggregated to less than 10% of NEA dues. There was no evidence introduced showing that NEA expended more than the rebatable amounts on political activity unrelated to collective bargaining matters.

Separate from NEA-PAC and rebatable activity, NEA does engage in political activity at the federal level that the record shows relates directly to collective bargaining, education funding and other issues that are integral to teacher welfare.

3. There is some overlap between IMPACE activity and the regular MEA organizational activity and staff. For example, local government relations councils participate in screening local candidates, as does IMPACE. In addition, some MEA staff members participated in political activity on behalf of the 1976 Carter-Mondale campaign, but the evidence showed that such partisan activities, taken as a whole, would be less than 2% of MEA's total budgeted activities.

Separate from any IMPACE overlap, MEA regularly engages in political activity at the state and local levels in the areas of education funding, teacher tenure rights, class-size policy, retirement benefits and other teacher welfare concerns affected by state or local budget decisions. Through its government relations committee and department and through a coordinated program of local volunteer members, MEA organizes lobbying efforts directly related to the foregoing teacher concerns. The record establishes that such political activities relate closely and directly to the collective bargaining efforts of MEA.

4. MCCFA has engaged in political activity that the record shows relates chiefly to securing legislative approval of the employment contracts negotiated or arbitrated with the MSBCC and to other collective bargaining issues.

5. Taken as a whole, the record establishes that MEA and NEA are properly characterized as public employee organizations actively engaged in improving through collective bargaining the terms and conditions of employment for teachers, and that MCCFA is organized and affiliated with MEA and NEA to pursue similar efforts on behalf of the community college faculty it represents. All three organizations engage in a wide range of legislative, governmental and public relations activities that are closely and directly related to furtherance of each organization's collective bargaining activities. IMPACE and NEA-PAC are separate from the regular operations of MCCFA, MEA and NEA and engage in partisan political activity financed by the independent, voluntary contributions of individual teachers and others.

This finding is based on the testimony of numerous officers and staff of MCCFA, MEA and NEA concerning the character of their political activity and the proportion of their time spent on political activity of any kind, in addition to the many exhibits relating to budget allocations of each organization.

There were two types of affirmative evidence presented by the plaintiffs to show that the defendant organizations are predominantly political action organizations: (1) written or oral statements made by the defendant organizations to the effect that political action is an integral, essential element of their activities; and (2) a "content analysis" of selected publications and meeting minutes of various defendant organizations, from which it was inferred that 50-100% of each organization's activity is "political" as opposed to "collective bargaining." We find this affirmative evidence unpersuasive. It fails to distinguish between activity related to collective bargaining and political activity unrelated to that end. The content analysis in particular treats all "lobbying, organizing and litigation"

matters as separate from "collective bargaining." Lobbying, organizing and litigation activities that directly relate to collective bargaining issues are thus excluded from the "collective bargaining" category of the analysis. The content analysis also assumes that the publications analyzed accurately reflect the range of activities actually undertaken by the organizations, an assumption unsupported by the record as a whole. The analysis of organizational publications was also outweighed by the firsthand testimony of the officers and staff of such organizations and the budgetary and other records of their activity.

III. FACULTY-EMPLOYER RELATIONS

A. The Structure of PELRA

Pursuant to Minn. Stat. § 179.67, the MCCFA has been certified as the exclusive representative of community college faculty for purposes of collective bargaining and has negotiated four such employment contracts since 1971.

PELRA imposes upon the employer a duty to "meet and negotiate" with an exclusive representative with respect to "terms and conditions of employment," as defined in the Act, and imposes a duty to "meet and confer" with "professional employees" with respect to employee concerns that fall outside the definition of "terms and conditions." *See* Minn. Stat. §§ 179.66, subds. 2 & 3, and 179.63, subds. 15, 16 & 18. PELRA further provides that, when an exclusive representative has been certified, "[t]he employer shall not meet and negotiate or meet and confer with any employee or group of employees * * * except through the exclusive representative." Minn. Stat. § 179.66.

Public employees under PELRA have a right not to join any labor organization which may be certified as their exclusive representative, but a "fair share fee" may be deducted from

nonmembers and paid to the representative. Minn. Stat. § 179.65, subd. 2.

Public employees have the right to communicate with their employer with respect to terms and conditions of employment so long as such activity "does not circumvent the rights of the exclusive representative if there be one." Minn. Stat. § 179.65, subd. 1.

Professional public employees, such as plaintiffs, have the right to "meet and confer" with the employer regarding matters other than "terms and conditions" of employment. Minn. Stat. § 179.65, subd. 3.

B. The Effects of PELRA in Practice

1. The 1979-81 employment contract between MCCFA and MSBCC provides *inter alia* that:

a. "The Employer will not interfere with the rights of employees to become or not to become members of [MCCFA] and there shall be no discrimination or interference, restraint, or coercion by the Employer * * * against any employee because of [MCCFA] membership or non-membership[;]"

b. The MCCFA has the sole right to "establish" up to six faculty committees at each campus for the purpose of holding "exchange of views" meetings with the college administration in the areas of "Personnel, Student Affairs, Curriculum, Facilities, Fiscal Matters, and General Matters;" and "[e]ach committee will have full authority in the assigned area to present the views of the employees" in such meetings;

c. Alternative structures for exchanging views may be agreed to by the campus chapter of MCCFA but "such agreement shall not in any way regulate or control the right of selection or participation by the local [MCCFA] association;"

d. A statewide-level "meet and confer" committee shall also be established by the statewide MCCFA, shall meet with

the MSBCC at least three times per year, and shall include as subjects "all items submitted by the State [MCCFA];"

e. Statewide and campus faculty representatives for contract administration matters are designated by the statewide or local MCCFA;

f. Class-size issues shall be resolved "through the exchange of views process;"

g. The academic year and summer school calendar shall be established by a committee comprised of the college president, student body president and campus MCCFA president;

h. The designation of academic departments and the responsibilities of "department coordinators" shall be determined through the exchange of views process;

i. Employee "complaints" may be presented to administrators with or without participation of the MCCFA grievance representative; formal grievances must be signed by the affected employee and the MCCFA grievance representative; and

j. The employer "will not during the life of this contract meet and negotiate or meet and confer relative to terms and conditions of employment with any employee or group of employees * * * except through the exclusive bargaining representative."

2. Prior to the implementation of PELRA, the faculty of at least some community college campuses were organized in "faculty senates or councils," with various committees thereof focusing on such subject areas as new course proposals and other curriculum matters, degree requirements, student activity budgets, academic standards and related discipline procedures for students, teacher evaluation and general budget and planning issues at each such campus.

The faculty senates or councils and committees thereof, together with general faculty assemblies, were the primary formal mechanism for formulating faculty views and communicating such views to the administration. Faculty representatives in this formal system were selected by election processes in which every faculty member was eligible to vote and seek election.

3. Since PELRA was adopted, "meet and confer" and "exchange of views" committees (hereafter, meet and confer) have replaced faculty senates and councils and are the principal formal mechanisms, at the campus and statewide levels, for formulating faculty positions on their concerns. The subjects covered by the meet and confer system include new course proposals and other curriculum matters, budgetary planning, development of facilities, student rights and student affairs generally, evaluation of administrators, selection of college presidents, academic accreditation of the community colleges, and other matters.

4. The degree and effectiveness of faculty organization varied from campus to campus prior to PELRA. The duty to "meet and confer," however, requires administrators at each campus to listen to and consult with the faculty on policy questions other than "terms and conditions of employment." Together with the establishment of "meet and confer" committees, the duty imposed by PELRA has made the formal meet and confer process the primary mechanism for any significant faculty-administration communication on such policy questions.

5. The views of a faculty meet and confer committee are considered by administrators to be the official faculty position on matters discussed in meet and confer sessions, but the administrators recognize that there are other positions held by individual faculty members.

6. No community college administrator or MSBCC member plays any role in the selection of the members on the faculty's meet and confer committees.

7. Pursuant to the employment contract, the MCCFA has exclusive control over designation of all faculty members on meet and confer committees at the campus and statewide level. Although there is no express policy against including nonmembers of MCCFA on such committees, in practice nonmembers have not been designated to serve in such roles.

8. Regardless of membership or nonmembership in MCCFA, all faculty have the right to informally communicate their individual views to administrators and the MSBCC and MCCFA have never attempted to deny or abridge such rights. The exclusive formal process for formulating and communicating a collective faculty position on policy questions, however, is through the meet and confer committees.

9. There are few formal rules with respect to determining which faculty members may appear before or present proposals to the meet and confer committees. In practice, however, committee members determine the agenda and focus of faculty expressions and committee meetings are not a general forum for individual faculty members or others to discuss matters of interest to them.

IV. FIRST AMENDMENT AND STATE INTERESTS

A. Associational Interests

1. The decision to join or contribute to IMPACE or NEA-PAC is wholly an individual, voluntary one. This record is devoid of any evidence that the plaintiffs have been required or in any manner coerced into supporting, joining, or refraining from opposing the efforts of IMPACE or NEA-PAC.

2. The only statutorily-imposed relationship between plaintiffs and MCCFA, MEA and NEA involves the deduction

of a fair share fee from the plaintiffs that is paid to MCCFA as the exclusive bargaining representative of community college faculty, a portion of which is paid to MEA and NEA for various collective bargaining and related assistance the latter groups provide to MCCFA.

3. To obtain or retain their faculty positions, or to derive the economic, job security and other benefits under the "terms and conditions" (as defined by PELRA) of their employment, the plaintiffs have not been and are not required or coerced into joining, or refraining from opposing, MCCFA, MEA or NEA. Such rights and benefits flow equally to all faculty members regardless of their membership or nonmembership in MCCFA.

4. The ability of the plaintiffs to participate in the meet and confer process, and to serve on meet and confer committees, is impaired by nonmembership in MCCFA as follows: The employment contract provides MCCFA with exclusive control over the selection of faculty members on meet and confer committees; such committee members have principal control over formulating the agenda of faculty concerns and the adoption of faculty views; and nonmembers of MCCFA have not been, in practice, selected for participation on such committees.

5. Having the opportunity to fully participate in the meet and confer process is viewed by some plaintiffs as essential to their role on the faculty. Some plaintiffs felt pressure to join the MCCFA in order to have such an opportunity and at least one plaintiff joined MCCFA for this reason.

6. No evidence was introduced demonstrating that service on meet and confer committees was available equally to members and nonmembers of MCCFA.

B. Free Speech Interests

1. The right of all faculty, both members and nonmembers of MCCFA, to communicate informally and individually with administrative officials has not been impaired by the MCCFA, MEA, NEA or the MSBCC.

2. Certain rights that might be characterized as elements of academic freedom are expressly protected by the employment contract, *e.g.*, the right of faculty members to select their course materials and textbooks, to choose their methods of teaching, to research and publish their work, to evaluate student performance and to select library materials.

3. There is a potential for impairing free speech rights arising from MCCFA's exclusive control over selection of faculty members on the meet and confer committees, as follows: A faculty member could be inhibited from speaking out against MCCFA generally or against particular issue positions strongly held by MCCFA because it might be feared that such action could result in exclusion from serving on the meet and confer committees.

The plaintiffs have not demonstrated that MCCFA selections of meet and confer committee members have in any way been conducted to "retaliate" in such a manner, nor that any faculty member's exercise of free speech has been impaired in practice by virtue of this potential inhibition.

4. The plaintiffs have failed to demonstrate any direct, indirect, actual or potential impairment of their associational and free speech rights, except as indicated in Findings IV(A)(4-5) and (B)(3).

C. State Interests

1. The parties have stipulated to a number of state interests that independent review of the record establish as true and relevant to these proceedings:

a. The State of Minnesota has a legitimate interest in promoting orderly and constructive relationships between public employers and employees. Unresolved disputes between public employers and their employees are detrimental to the public interest as well as to the interests of the involved parties.

b. The State of Minnesota has determined that enactment of the Public Employment Labor Relations Act is the means by which it can best deal with its employees in a fair, efficient and peaceful fashion.

c. A statutory system which permits employees in a unit to be represented by an exclusive representative results in the avoidance of confusion, conflicting demands, and dissension that would result from more than one representative claiming to represent all the employees in an employee unit.

d. The State of Minnesota has a legitimate interest in maintaining "labor peace" by entering into agreements with an exclusive representative for each employee unit, which agreements are not subject to direct challenge by rival employee organizations claiming to represent the same employees in each unit.

2. Creating a procedure for systematic expression of faculty views on a broad range of campus policy questions furthers each of the foregoing state interests.

3. The record does not demonstrate, nor does the State of Minnesota assert, any state interest in allocating the benefits and obligations of the exclusive representation collective bargaining system in a manner which discriminates between members and nonmembers of the employee organization.

4. Additional state interests appear on the face of and by inference from the PELRA statute, which therefore need not be set forth here.

ORDER

1. Each party to this proceeding shall submit proposed conclusions of law based upon the facts as found herein on or before December 9, 1981.

2. Each party may submit a memorandum of points and authorities in support of their position, together with their proposed conclusions. Such memorandum shall not exceed twenty-five (25) pages in length.

3. Final oral argument will be December 16, 1981 at 2:30 o'clock p.m.

GERALD W. HEANEY
United States Circuit Judge
DONALD D. ALSOP
United States District Judge
EARL R. LARSON
U.S. Senior District Judge

Dated: November 16, 1981.

(Caption)

REPORT OF LEONARD E. LINDQUIST, SPECIAL MASTER
Order of Reference to Special Master
December 13, 1979
Report filed March 23, 1981

(Caption)

REPORT OF SPECIAL MASTER
FINDINGS OF FACT

Dr. Edwin Vieira, Jr., Esquire, 12408 Greenhill Drive, Silver Spring, Maryland 20904, and John J. Fogarty, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock

Road, Suite 600, Springfield, Virginia 22160, appeared for and on behalf of the Plaintiffs.

Darel F. Swenson, Esquire, 15500 Wayzata Boulevard, 610 Twelve Oaks Circle, Wayzata, Minnesota 55391, appeared for and on behalf of the Plaintiffs.

Messrs. Eric R. Miller, Keith E. Goodwin, Mark D. Anderson and Donald W. Selzer, Jr., Esquires, of the law firm of Oppenheimer, Wolff, Foster, Shepard and Donnelly, W-1700 First National Bank Building, St. Paul, Minnesota 55101, appeared for and on behalf of the Defendant Labor Organizations

Donald J. Mueting, Esquire, Special Assistant Attorney General, Barbara Lindsey Sims, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155, appeared for and on behalf of the State Defendants.

On December 13, 1979, the Honorable Donald D. Alsop, the Honorable Gerald W. Heaney, and the Honorable Earl R. Larson, sitting as three-judge panel, issued an order appointing a Special Master in this case pursuant to Rule 53 of the Federal Rules of Civil Procedure. In the order of appointment of December 13, 1979, the Court granted the Special Master the following powers:

1. Conduct conferences, issue orders, and do all other things necessary to supervise compliance with the Order of this Court of December 13, 1979, permitting such changes in the deadlines set by that Order as may be necessary in the interests of justice.

2. Take testimony on disputed facts in the above-entitled action and organize them in an understandable fashion, but not make recommendations to the Court as to an appropriate decision on the merits.

3. Report to the Court on the progress of the parties' compliance with the Order of this Court of December 13, 1979, and upon the timing and procedure adopted for the taking of testimony.

The Court, subsequent to the Order of December 13, 1979, has not restricted the powers of the Special Master concerning rulings on admissibility of evidence or otherwise. The Special Master began hearings in this proceedings on August 4, 1980. The case proved to be a formidable one. There were 41 actual hearing days for the taking of testimony, and the trial transcript consists of 5,693 pages. More than 500 exhibits were introduced, many of which were multiple page documents containing up to several hundred pages.

Elaborate proposed findings of fact were submitted by each party pursuant to an Order of the Special Master dated November 25, 1980. The Special Master makes the following Report pursuant to Rule 53 of the Federal Rules of Civil Procedure and the Order of the Court dated December 13, 1979:

STATEMENT OF ISSUES

The following constitutional issues remain in this action for determination by the Three-Judge Court:

(1) Whether it is constitutional, under the First and Fourteenth Amendments, for the Minnesota Community College Faculty Association to act as "exclusive representative" of plaintiffs under color of the Minnesota Public Employment Labor Relations Act, Minn. Stat. §179.61 *et seq.*

(2) Whether the "meet and confer" provisions of the Minnesota Public Employment Labor Relations Act, particularly Minn. Stat. §§179.63, subdv. 15, 179.65, subdv. 1, and 179.66, subdv. 7, are constitutional on their face and as applied to plaintiffs, under the First and Fourteenth Amendments.

Plaintiffs also have asserted certain federal statutory claims against the several defendants; however, in "Plaintiff's Report to the Court on the Status of the Case as of the Pre-Trial Hearing on 19 November 1979," plaintiffs at page 3 state:

> "These not being federal constitutional claims cognizable by a three-judge court, they will receive no further consideration in this Report. However, the Court should be aware that the federal statutory claims rest upon the same ultimate facts as Plaintiffs' constitutional challenge to PELRA as applied."

BURDEN OF PROOF

The parties have submitted briefs concerning the burden of proof in this matter but the Special Master has made no legal determinations on this issue because the Court in its order of reference directed the Special Master to take testimony on disputed facts and organize them in an understandable fashion, "but not make recommendations to the Court as to an appropriate decision on the merits."

I. PARTIES

1. Plaintiffs are residents of Minnesota and are public employees employed as faculty by the Minnesota State Board for Community Colleges (MSBCC) as follows:

(a) Leon Knight and Morgan Kjer are faculty members of North Hennepin Community College, located in Brooklyn Park, Minnesota;

(b) James D. Wallace, Terrence D. Florin, William B. Bauman, Harold J. Gardner, Thomas J. Patin, Eugene D. Mielke, Dr. Richard A. Thompson, Joan M. Farkas, Gary D. Nelson, Ronald Lievense, and Lucille Johnsen are or were faculty members of Normandale Community College, located in Bloomington, Minnesota; and

(c) Virginia E. Lanegran, Ralph G. Powell, Richard D. Isenhart, and Cresston Gackle are or were faculty members at Anoka-Ramsey Community College, located in Coon Rapids, Minnesota.[1]

2. Plaintiffs are represented collectively in the negotiation of collective bargaining agreements, grievance adjustment, and arbitration of issues in dispute with MSBCC by defendant Minnesota Community College Faculty Association (MCCFA) which is certified as their exclusive representative pursuant to the Public Employment Labor Relations Act (PELRA) M.S. 179.61 et seq.

3. Plaintiffs are not and do not desire to become formal members[2] or supporters, financial or otherwise, of defendants MCCFA, Minnesota Education Association (MEA), Independent Minnesota Political Action Committee for Education (IMPACE) or National Education Association (NEA) or of the National Education Association Political Action Committee (NEA-PAC—which is not a defendant); nor do they desire to be represented either individually or collectively by said organizations with respect to terms and conditions of employment or any other matter in which defendant labor organizations are involved.

4. Defendant labor organizations consist of NEA, MEA, MCCFA and IMPACE.

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[1] Three plaintiffs, Donald A. Dahlin, David R. Grout and Max A. Malmquist had previously expressed a desire to withdraw their participation in the case which request was denied together with other matters in the Court's Order of April 24, 1980. The plaintiffs' proposed findings did not include these three persons as identified plaintiffs.

[2] Defendant Labor Organizations' Response to Plaintiffs' Motion to the Special Master to Adopt their Proposed Findings of Fact at page 2 states: " . . . the following plaintiffs are presently members of the MCCFA: Harold J. Gardner, Eugene D. Mielke, Joan M. Farkas, and Cresston Gackle."

(a) *NEA*. NEA is a national voluntary organization of teachers which is governed by its own Representative Assembly, Board of Directors and Executive Committee. The NEA has both state and local affiliates and the NEA Representative Assembly is comprised of members of the national, state and local associations. NEA's bylaws provide that as a condition of affiliation with NEA, local level affiliates must require their members to become members of NEA and the appropriate state level affiliate where eligible. MEA's bylaws provide that MEA's active members also be members of NEA and of the appropriate local level affiliate of MEA. As an affiliated organization of MEA, MCCFA must make memberships in MEA one of the requirements of membership in MCCFA. MCCFA requires its active members to become members of MEA and NEA.

The Representative Assembly is the primary policy-making body of the NEA. It elects the president, vice president, secretary, treasurer, at-large members of the Board of Directors, and the at-large members of the Executive Committee. The Assembly also adopts the program budget, votes on proposed amendments to the constitution, bylaws and standing rules, receives committee reports, and approves resolutions and new business.

(b) *MEA*. The MEA is a statewide voluntary organization of teachers which is governed by its own Representative Assembly, Board of Directors and Executive Committee. The MEA has divided the state into various geographic regions known as UniServ units. Each UniServ unit serves one or more local associations and usually has its own governance structure. Every UniServ unit and the MCCFA are entitled to representation on the MEA's Board.

(c) *MCCFA.* The MCCFA is a voluntary organization of faculty members which is governed by its own Delegate Assembly, Board of Directors and Executive Committee and is affiliated with the MEA and NEA.

(d) *IMPACE.* IMPACE is a voluntary, non-profit committee of individual educators and others with its own Board of Directors which has general supervision and control of the organization including all determinations of financial contributions to the campaigns of candidates for public office in Minnesota. IMPACE Board of Directors members are appointed by the MEA Board of Directors. Some of defendant labor organizations' officials and publications have characterized IMPACE as MEA's political action arm.

5. *NEA-PAC.* NEA-PAC is not a defendant but is a national voluntary, non-profit committee of teachers which is governed by its own Steering Committee which determines those federal candidates for public office whose campaigns shall receive financial contributions. NEA-PAC has been characterized by some defendant labor organizations' officials as NEA's political action arm. IMPACE chairman, Roger Johnson, is a member of the NEA-PAC Council by virtue of his IMPACE Chairmanship.

II. NATURE OF DEFENDANT LABOR ORGANIZATIONS

1. The MCCFA is the certified exclusive bargaining agent for the faculty of the Minnesota Community College system. It has functioned in this capacity since July 1, 1971. Since that date the MCCFA has been involved in extensive labor negotiations with the MSBCC. Negotiations have encompassed four master contracts. Negotiations for the 1973-1975 contract lasted 18 months, for the 1975-1977 contract, 10 to 12 months, for the 1977-1979 contract, 12 months, and for the 1979-1981

contract, 12 months. As part of the negotiation process, the 1975-1977 and 1977-1979 contracts were submitted to an arbitrator for mandatory arbitration. The 1979-1981 contract was not so submitted because of the MSBCC's refusal to submit the matter to arbitration. As a consequence, a three-week strike occurred. During that strike the MCCFA operated 19 strike headquarters located at the various community college campuses.

2. The negotiations, arbitrations and 1979 strike have resulted in four collective bargaining agreements between the MCCFA and the MSBCC. The agreements cover standard subjects of bargaining between unions and employers such as seniority, salary, fringe benefits, work load, dismissal provisions, a grievance procedure, and leave policies.

3. The MCCFA's primary policy making body is the Delegate Assembly. Between Delegate Assemblies, the Board of Directors, the Executive Committee, the President and the Executive Director conduct the day to day business of the MCCFA. This involves grievance adjustment, contract maintenance, membership promotion, communication, and dealing with MCCFA committees, i.e., negotiations, professional growth, MCCFA resolutions, nominating committee for MCCFA state office, state meet and confer committee and governmental relations committee. These activities are designed to implement its collective bargaining position.

4. The ability of the MCCFA to implement its bargaining position is improved and enhanced to the extent it can obtain support from its members, generate public support for its positions, credibly negotiate with the employer from a position of strength, obtain financial support from all members of the bargaining unit and obtain a high percentage of employees within the unit as members of the MCCFA.

5. While the MCCFA is the certified bargaining agent for the community college faculty members, the MEA is a statewide teacher organization which assists local associations, including the MCCFA, which are affiliated with it, in negotiating, implementing and maintaining collective bargaining contracts. Approximately 65% of the public school teachers in Minnesota are represented by local education associations affiliated with MEA. The remaining 35% are represented by locals affiliated with Minnesota Federation of Teachers. There is continuous competition between these organizations for exclusive representative status in various units with approximately 10 to 15 bargaining elections occurring each year.

6. MEA's assistance to affiliated locals takes place in a number of areas. MEA has departments and councils which function in the area of negotiations, teacher rights, field services, instruction and professional development (IPD), communications, governmental relations and economic services. In addition there is an overall administration and governance structure. Under the MEA's structure, the councils are comprised of teacher members who are not paid for their services save for reimbursement of expenses. In contrast, the departments are staffed by paid employees of the MEA and comprise the day to day working staff of the organization. A description of the departments and councils follows:

(1) *Negotiations.* The Negotiations Council and Department have the purpose of determining and implementing the negotiation policy of the MEA. The department reviews collective bargaining contracts, analyzes district budgets, conducts negotiation training sessions, drafts model contract language, participates in the NEA bargaining support network and provides assistance in local negotiations and in impasse arbitrations as necessary.

(2) *Teacher Rights.* The Teacher Rights Council and Department have the purpose of establishing and monitoring teacher statutory rights and teacher contracts. The areas within teacher right activities relate to grievance processing training for teachers, contract maintenance, job security under the Tenure Act, teacher licensure, tort liability for teachers, legal protection for teachers, and student handicap and child abuse rules and regulations.

(3) *Field Services.* The Field Services Council and Department have the purpose of assisting the local associations and their leadership. This function is primarily carried out by approximately 35 UniServ directors who are located in various regions of the state and who assist a particular UniServ unit which may be comprised of one or more local associations. For example, the MCCFA is one UniServ unit. The UniServ director functions in all significant respects in the same fashion as a private sector union business agent. UniServ directors spend the vast majority of their time assisting locals in bargaining representation elections, collective bargaining, contract administration grievance adjustment and member leadership training.

(4) *Instructional and Professional Development (IPD).* The IPD Council and department have the purpose of improving the professional status of teachers. This includes teacher training programs in such areas as discipline, how to deal with stress and drug abuse and research into class size and issues of academic freedom.

(5) *Communications.* The Communications Council and Department provides for communications both internal and external to the organization. The communication occurs via a number of mediums: written, television and telephone.

(6) *Governmental Relations.* The Governmental Relations Council and Department have the purpose of encouraging MEA members to influence public decision makers on decisions related to education and to become involved in the political process. The Governmental Relations Council has four committees: legislative objectives committee, teacher retirement committee, school finance committee and teacher in politics committee. The Department is staffed by two professionals who are lobbyists registered with the State of Minnesota.

(7) *Economic Services.* The Economic Services Council and supporting separate corporate organization, Economic Services, Inc., provide economic benefits to teachers through group buying, group travel and group insurance.

(8) *Administration.* In addition to the seven councils and departments, the MEA organization has an overall administrative office which is comprised of the office of executive director and the office of business affairs. These offices coordinate the staff functions of the MEA. Further, the elected leadership, the Representative Assembly, the Board of Directors and the officers provide the leadership to the organization and the staff.

7. One particular example of MEA support to the MCCFA related to the three-week 1979 strike. At that time the MCCFA received approximately $200,000 in outright grants from the MEA for the cost of running numerous strike headquarters as well as payments of $100 per week to striking faculty members after the Tenth day of the strike. Further, the MEA, along with the NEA, guaranteed about $300,000 worth of loans to striking members during the period of the strike. The MEA also provided approximately 12 additional MEA staff

members to assist the MCCFA during the strike. That support is emblematic of the need that a particular local may have for the state organization. For example, the financial assistance provided exceeded, in one strike alone, over three years of dues payments by MCCFA to MEA.

8. The NEA is a national organization of teachers which assists locals to become and remain certified as collective bargaining agents and to aid state associations in their role as an advocate for their teacher members. In this effort the NEA has created and funded a bargaining support network system which is a computerized program containing bargaining information, school budget analysis and contract arbitration decisions. This is available to all affiliates. A legal defense fund, the DuShane Fund, is another program which assists state affiliates in providing legal services to teachers concerning job problems. The NEA annually spends significant resources on research and the training of its members and staff concerning negotiations, teacher rights, grievance arbitration, strikes, and governmental relations. For example, the NEA spends millions of dollars to financially support the nationwide UniServ system which functions as paid staff members assisting local associations in the manner of a local business agent.

9. The NEA also annually expends substantial time and money on instruction and professional development for teachers; training and direct assistance to local affiliates concerning bargaining elections and technical information and consulting to local and state affiliates concerning matters such as fiscal procedures, teacher retirement and affirmative action programs. As part of its efforts to improve working conditions for teachers, the NEA lobbies Congress and encourages its members to become involved in supporting educational policies which will improve teacher standards and welfare.

10. Since July 1, 1971, the NEA has provided the MEA and MCCFA with information and assistance in the negotiation of master bargaining agreements and the administration of those agreements, including grievances.

III. POLITICAL ACTIVITIES OF DEFENDANT LABOR ORGANIZATIONS

1. Certain activities conducted by defendant labor organizations can be characterized as political in nature. However, the majority of this political activity is directly related to and reasonably necessary for the proper effectuation of collective bargaining, contract administration, and grievance adjustment.

2. To the extent that defendants are involved in partisan politics, such activity is conducted primarily through their "political action" organizations NEA-PAC, IMPACE and the local association's political action organizations, if any. In addition, the MEA Governmental Relations Council and the MEA Teachers in Politics subcommittee of that council provide a vehicle for participation in political activities by members of the defendant labor organizations.

3. In addition to the MEA Governmental Relations Council, most local associations and UniServ units have local governmental relations councils which work in conjunction with IMPACE to screen candidates for political office. IMPACE provides funds to campaigns of persons seeking public office in Minnesota. NEA-PAC funds presidential and United States congressional and senatorial campaigns.

4. MEA's lobbying activities pertain to those legislative measures which directly affect education and teacher rights issues. Two recent examples of substantial lobbying efforts by the MEA Governmental Relations Department and Council were the potential veto by the Governor of amendments to

PELRA and the recent action by the Governor to reduce state aid to local school districts. Additionally, MEA's lobbying efforts have been directed to such educational issues as teacher retirement benefits, school finance issues, teacher tenure legislation, funding collective bargaining, teacher involvement in curriculum, and teacher licensure by the Department of Education and the Board of Teaching.

5. The NEA and MEA sponsored a "get out the vote" campaign for the 1976 and 1980 Carter/Mondale candidacy to seek election of a candidate with views demonstrably favorable to education; in particular, budgetary allocations.

6. MCCFA directs its lobbying efforts to collective bargaining rights. Lobbying of the state legislature is conducted to obtain approval and funding of MCCFA collective bargaining agreements and for the enactment of legislation concerning community college faculty.

7. NEA has engaged in lobbying activity with the Congress and federal agencies with respect to proposed legislation on significant educational issues such as federal financial support of education, teacher welfare, appropriation for education, education of handicapped children, teacher training, and bilingual education.

8. For those members who do not desire to participate in or support political activities not related to collective bargaining, grievance adjustment and the welfare of teachers, the NEA has adopted a political activity rebate procedure which has been used annually since 1974 to identify the cost of any of its activities directed toward:

(1) The administration of an independent political action committee.

(2) The determination and/or publishing of an organization preference for a candidate for public office.

(3) Efforts to enact, defeat, repeal, or amend legislation which is not related to working conditions (legislation establishing collective bargaining, professional negotiation, or some other system of employer/employee relations is deemed related to working conditions), welfare, or a working environment of employees represented by the MEA and/or its affiliates.

(4) Since 1979, ideological or charitable activities have been included in the political activity rebate calculations.

The amounts of the rebates have been between 6.2 and 8.6 percent of NEA dues.

9. The MCCFA and MEA expend a very limited amount of time and money on political activity which is not related to collective bargaining or teacher rights.

10. Professor Gordon Tulluck of Virginia Poly-Tech Institute testified on behalf of plaintiffs as an expert witness in political science and political economy. Professor Tulluck testified that defendant labor organizations are predominantly involved in partisan politics, lobbying, public relations and political organizing. However, Professor Tulluck made no distinction between the activities which are related to collective bargaining and those which are not. Further, the Tulluck testimony is premised on publication "content analysis." That analysis relies on the assumption that if, for example, 15 percent of the space in an organization's publications deal with a certain issue, then it follows that 15 percent of everything that organization does must necessarily involve the same issue. That assumption is not supported by the evidence.

11. In summary, the MCCFA functions as a public sector union involved in collective bargaining, negotiations, contract maintenance, and grievance adjustment. The MEA and NEA

provide substantial assistance to the MCCFA in this effort. Almost all of the defendant labor organizations' activities, in the last analysis, are related to that effort. To the extent that the defendants, through their union political action committees or otherwise, become involved in partisan political activities, such activities are clearly secondary, in both scope and effort, to the day to day efforts of members and staff to negotiate for and to protect the employment rights of teachers.

IV. FREEDOM OF ASSOCIATION

1. Plaintiffs are not required to become members of any of the defendant labor organizations. The only relationship between plaintiffs and the MCCFA is that the MCCFA is the exclusive representative for the purpose of PELRA and the plaintiffs must pay fair share fees to the MCCFA pursuant to PELRA if the MCCFA so requests.

2. Plaintiffs are not required to agree with MCCFA or give any form of allegiance in order to retain their jobs.

3. Plaintiffs are free to join groups or to refrain from joining groups opposed to the MCCFA and engage in all forms of partisan political activity, lobbying, political organizing and litigation.

4. The only relationship between the plaintiffs and the MEA or the NEA is that a portion of fair share funds go to those organizations to help pay for numerous services available to the MCCFA. Plaintiffs are not required to join the MEA or NEA as a condition of employment. Plaintiffs are not required to give allegiance to the MEA or NEA. Plaintiffs are free to join groups opposed to the MEA or NEA with no adverse impact on their job security. Plaintiffs are free to engage in all forms of partisan political activity.

5. There is no relationship between plaintiffs and IMPACE or NEA-PAC. IMPACE and NEA-PAC are funded

by voluntary teacher contributions obtained in fund-raising drives. Plaintiffs are free to contribute or not to contribute based upon their own personal choice. Plaintiffs are not required to give allegiance to IMPACE or NEA-PAC and may join any organizations opposed to IMPACE or NEA-PAC.

6. The plaintiffs are not required to become members of, to give allegiance to or join in the activities of these organizations. Plaintiffs simply are required to provide financial support for representation in collective bargaining and grievance administration.

V. RELATIONSHIP OF NEA, MEA, MCCFA, NEA-PAC AND IMPACE

1. The defendant labor organizations function independently in negotiating collective bargaining agreements. Specifically, the NEA has no authority to meet and negotiate a collective bargaining agreement with a public employer or to modify or veto any collective bargaining agreement entered into by a state or local affiliate. There is no authority that would permit NEA, MEA, IMPACE or NEA-PAC to determine what the subjects of meet and negotiate shall be between the MCCFA and the MSBCC. Further, no local or state affiliate has any authority to modify or veto any collective bargaining agreement entered into by the MEA or NEA with their respective professional staffs.

2. The independence of the defendant labor organizations can be found in their constitutional structures. MCCFA, MEA, and NEA each have separate constitutions and bylaws. MEA's articles and bylaws may be amended without NEA or local affiliate approval. MCCFA bylaws may be changed by vote of its membership alone and the NEA is the only group which can amend the NEA constitution and bylaws.

3. The MCCFA, MEA and NEA are separate organizations in that they each have separate representative and delegate assemblies, boards of directors, officers, standing committees and staff.

4. The MCCFA, MEA and NEA each have separate professional staffs. The MCCFA Executive Director was selected by the MCCFA Board of Directors and receives general direction from that Board and daily direction from the MCCFA President. The MEA executive staff makes all major decisions concerning the activities of MEA staff. The NEA is the sole employer of its professional staff. The NEA and its professional staff do not engage in any generalized supervision of the professional staff of any state or local affiliate, including the MEA and MCCFA, nor does any local or state affiliate or their staffs have any supervisory responsibilities concerning the NEA professional staff.

5. MCCFA, MEA and NEA exercise independent policy and goal decisions. State and local associations have no authority to participate in, modify, or veto a goal or program adopted by NEA. Conversely, state and local affiliates, including MEA and MCCFA, determine their own goals and programs; NEA does not have authority to participate in this process, modify or veto a goal or program adopted by a state or local affiliate.

6. In terms of the budgetary process, NEA, MEA and MCCFA are separate and independent. NEA determines its own budget and makes its own expenditure decisions; no state or local affiliate has any authority to interfere. In like manner the MEA determines its own budget and makes its own expenditure decisions; national and local affiliates have no power to interfere with this process. The MCCFA Board of

Directors determines MCCFA's budget; NEA and MEA have not attempted to determine how MCCFA spends its funds and have no requirements as to how the funds should be expended.

7. The relationship of the NEA, MCCFA and MEA is set forth in the affiliation agreement which is the basic document defining the rights, duties, and obligations of the respective organizations; no party can unilaterally change or modify that contract. Under this agreement, MCCFA's only obligation to MEA and NEA is to pay dues. The affiliation agreement provides that except for the unified dues, MCCFA shall retain its autonomy, elect its own officers, hold its own meetings, adopt rules and policies, and maintain autonomy in all areas as specified under the constitution of MCCFA.

8. The NEA-PAC Steering Committee and NEA officers and directors are separate and the NEA Executive Committee has no power to modify NEA-PAC's proposed budget.

9. IMPACE funding decisions and other activities are final and have never been altered by the MCCFA, MEA or NEA. IMPACE contracts and pays for the services of certain MEA staff members together with paying MEA for IMPACE's office space and other support service needs. The MEA's only role concerning the governance of IMPACE is that the MEA President nominates and the MEA Board of Directors approves appointments to IMPACE's Board of Directors.

10. NEA, MEA, MCCFA, NEA-PAC, IMPACE and Uni-Serv do have some goals in common and have adopted procedures for cooperating in sharing information and achieving those goals. Disaffiliation has resulted from disagreement over policy goals.

11. NEA, MEA, MCCFA, NEA-PAC and IMPACE provide to or share with one another various services and facili-

ties. Officials, staff personnel, and representatives of NEA, MEA, MCCFA, NEA-PAC and IMPACE regularly attend meetings with one another, plan certain cooperative programs, report to their respective organizations concerning the activities of the other organizations, and maintain continuous channels of communications among themselves.

12. In organizational science, "integration" means that various entities are interdependent or interconnected to the point of functioning as one unit, or that members of various entities collaborate and coordinate their activities toward some unified effort or purpose.

13. Two expert witnesses in organizational science, Prof. Craig E. Schneier and Prof. Cyril P. Morgan, testified on behalf of plaintiffs that defendant labor organizations are integrated. These witnesses acknowledged that there were various basic facts raising questions or doubts as to whether these organizations were in fact integrated. The witnesses did not have sufficient facts upon which to offer a reliable opinion concerning whether the NEA and the other more than 50 state associations and 10,000 local associations were integrated. No expert witness in organizational science testified on behalf of the defendant labor organizations or the state official defendants.

14. In summary, while NEA, MEA, NEA-PAC, IMPACE and MCCFA do share some common goals and policies and in limited circumstances some personnel, in practice they operate as separate and distinct organizations in their (1) collective bargaining functions; (2) constitutional structures; (3) goal and policy determinations; (4) budgetary and financial activities; and (5) management operations.

VI. ALLEGED ABRIDGMENT OF FREE SPEECH

1. Minn. Stat. 6179.65, subd. 1, in relevant part provides: Nothing contained in sections 179.61 to 179.76 shall be construed to limit, impair or affect the right of any public employee or his representative to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative if there be one; nor shall it be construed to require any public employee to perform labor or services against his will.

2. Prior to the first collective bargaining agreement that MCCFA negotiated as exclusive representative under PELRA in 1973, there were "faculty senates" or "faculty councils" at each of the community colleges. The purpose of these senates or councils was to facilitate a formal organized dialogue between faculty and college administrators concerning college policies.

3. Under the system in effect prior to 1973, each faculty member was eligible for election to the committee in which curriculum, academic standards, and college policies were established. All resolutions passed by the faculty senate were subject to a further review process at the general faculty assembly. Tenure decisions were based in part on the recommendation of a three-person committee composed of department members chosen by the instructor being evaluated. Division chairmen were elected by members of each academic division.

4. In 1973, with the inception of PELRA, "meet and confer" and "exchange of views" committees replaced the faculty senates and councils as the collective representatives through which a formal organized dialogue is conducted with the administration concerning college policies. There are "exchange of views" or "meet and confer" committees covering such areas as curriculum, fiscal/personnel, student services and general matters. With the institution of the first master contract setting forth the negotiated terms and conditions of employment, the division chairman concept was discontinued as was the tenure evaluation system.

5. Both before and after the passage of PELRA and the existence of the first bargaining agreement, the community college administration has possessed the sole and final authority to determine policy after having received the views and concerns of the faculty.

6. Prior to the passage of PELRA and the existence of the first bargaining agreement, the MSBCC recognized the predecessor organization of the MCCFA as the faculty representative for purposes of discussing and in some cases agreeing upon subjects such as salary structure and leaves. One of the plaintiffs, Leon Knight, was the president of this predecessor organization and served as the faculty representative in such discussions with the MSBCC.

7. Under PELRA the employer has the obligation to meet and confer in good faith with the exclusive representative to exchange views and concerns relating to employment which are not specifically "terms and conditions" of employment subject to collective bargaining.

8. Although there is not a provision in the MCCFA's constitution or an articulated policy specifically precluding a nonunion member from becoming a member of a meet and

confer or exchange of views committee, as a practical matter, such committee membership does not occur if the faculty member is not a member of the MCCFA.

9. This practice, while precluding non-members of MCCFA from participating in the formal meet and confer process, does provide a formal, orderly process by which the views and concerns of the employer and employees may be exchanged.

10. Non-members of MCCFA may and have engaged in numerous alternative means of communication with college administrators concerning the views and concerns of these faculty members. Opportunities for communication with the college administration include breakfast meetings, afternoon meetings, and informal meetings at any other time as part of the administration's open door policy.

11. The MSBCC has never denied any of its employees the opportunity to communicate to board members on any subject related to matters affecting the community college, and the college administrators have not precluded faculty members, including the plaintiffs, from expressing their views and concerns to the administration or the board.

12. Neither the plaintiffs nor the college administration have ever been informed by any MCCFA representative that non-members were precluded from expressing their views and concerns to the college administration.

13. Plaintiff Knight acknowledged he has the right to submit his views or speak directly to the administration or College officials and that the president and academic dean at his college have an open door policy to talk at any time on any subject. Plaintiff Kjer has been specifically invited by the president of his campus to general faculty discussions where he is free to express his views. Plaintiff Lievense stated the op-

portunity to communicate with the administration is as free now as it was in the past and that he has expressed his opinions to the administration on all subjects of concern to him.

14. The state meet and confer and campus exchange of views meetings, while open, are not meetings at which the general public or individual faculty members are provided a forum to discuss any matters of interest to them. There are other opportunities for the public or individual faculty members to express their views on matters relating to campus affairs.

15. The plaintiffs' ability and freedom to communicate their opinions and concerns involved in their employment to the MSBCC and the college administration has not been repressed or abrogated since the MCCFA became the exclusive representative for the community college faculty. The plaintiffs have retained and exercise their opportunities to communicate directly with the MSBCC and the college administration concerning a broad range of subjects relating to their employment.

VII. EXPERT TESTIMONY: KRAUSS, PETRO, BRADLEY, DERBER

1. Two expert witnesses in political economy, Professor M. B. Krauss of New York University and Consulting Economist Dr. P. D. Bradley, testified on behalf of plaintiffs concerning what they perceive to be the substantial equivalence of collective bargaining and exclusive representation under PELRA as compared with the National Industrial Recovery Act (NIRA) and the Bituminous Coal Conservation Act (BCCA). Dr. Bradley and Professor Krauss contend that PELRA, NIRA and BCCA are historically related, functionally equivalent, and structurally identical. Professor Krauss contends, and Dr. Bradley concurs, that PELRA is an example

of the "corporate state" form of economic organization once found in fascist Italy.

2. Dr. Milton Derber, Professor of Labor and Industrial Relations, University of Illinois, testified as an expert witness on behalf of the state defendants. According to Dr. Derber, the comparison of PELRA to a corporate state model is misleading and inappropriate because there is no commonly accepted corporate state model. Further, while there are many possible models of corporatism, the model used by the plaintiffs is inappropriate, simplistic, and does not lead to a correct analysis of PELRA because it does not take into consideration factors such as the complexities of our governmental system, the checks and balances inherent in the system, the distribution of power, and division of responsibilities within government as to the allocation of resources. Finally, Dr. Derber testified that Professor Krauss' and Dr. Bradley's comparison of PELRA to NIRA and BCCA is inaccurate because it does not take into consideration critical historical differences such as the serious domestic crisis in the United States at the time the latter laws were enacted, the conditions which led to the enactment of PELRA, and the important differences between public and private sectors.

3. Professor Sylvestor Petro, plaintiffs' expert witness in political theory, testified that compulsory public sector collective bargaining is inconsistent with governmental and popular sovereignty. Mr. Petro's sovereignty argument is based solely on the preamble of the United States Constitution.

4. The testimony of plaintiffs' witnesses Krauss, Petro, and Bradley, being of little relevancy, has not otherwise been referenced in these Findings of Fact.

VIII. SUBSTANTIAL STATE INTEREST SUPPORTING PUBLIC SECTOR COLLECTIVE BARGAINING

1. The State of Minnesota has a legitimate interest in promoting orderly and constructive relationships between public employers and employees. Unresolved disputes between public employers and their employees are detrimental to the public interest as well as to the interests of the involved parties.

2. The State of Minnesota has determined that enactment of the Public Employment Labor Relations Act is the means by which it can best deal with its employees in a fair, efficient and peaceful fashion.

3. A statutory system which permits employees in a unit to be represented by an exclusive representative results in the avoidance of confusion, conflicting demands, and dissension that would result from more than one representative claiming to represent all the employees in an employee unit.

4. Exclusive representation institutionalizes employer/employee conflict and provides a more stable method of dealing with such conflict. Further, exclusive representation allows public managers to deal with one organization concerning a particular group of employees; this has a stabilizing effect and removes the barrier to effective communication which exists with multiple unionism.

5. The State of Minnesota has a legitimate interest in maintaining "labor peace" by entering into agreements with an exclusive representative for each employee unit, which agreements are not subject to direct challenge by rival employee organizations claiming to represent the same employees in each unit. The available information in the area of labor and industrial relations indicates that collective bargaining through exclusive representation leads to increased labor stabilization and less labor strife.

6. The general citizenry benefits from collective bargaining through exclusive representation by the elimination of conflict over representation, the reduction of barriers to effective communication, and the elimination of employee groups being played off against one another. It has been determined by the legislature that relationships between the public, the public employees, and their employer implies a degree of responsibility to the public which is different from employment in the private sector. As unresolved disputes between the public employer and its employees are injurious to the public as well as the parties, the state has adopted exclusive representation as a means of minimizing such disputes and providing for their resolution. This is the express policy of PELRA.

7. Minn. Stat. §179.74, subd. 5, as originally enacted in 1971 and applicable to state employees, including the community college faculty, provided:

> The negotiating team is authorized to and may enter into tentative agreements to be submitted to the legislature.

Minn. Stat. §179.74, subd. 5, as amended in 1973 provided in relevant part:

> The commissioner of personnel is authorized to and may enter into agreements. The provisions of said agreements which establish wages and economic fringe benefits shall be submitted to the legislature to be accepted, rejected or modified.

In 1979 Minn. Stat. §179.74, subd. 5, was amended and presently provides:

> The commissioner of employee relations is authorized to and may enter into agreements with exclusive representatives of the units specified in section 179.741, subdivision 1. The provisions of the negotiated agreements and

arbitration awards shall be submitted to the legislature to be accepted or rejected in accordance with this section and section 3.855. In the event that a proposed agreement or arbitration award is rejected or is not approved by the legislature prior to its adjournment in an odd numbered year, the legislative commission on employee relations is authorized to give interim approval to a proposed agreement or arbitration award. The proposed agreement or arbitration award shall be implemented upon its approval by the commission and state employees covered by the proposed agreement or arbitration award shall not have the right to strike while the interim approval is in effect. The commission shall submit the agreement or arbitration award to the legislature for ratification at a special legislative session called to consider it or at its next regular legislative session. Wages and economic fringe benefit increases provided for in the agreement or arbitration award which were paid pursuant to the interim approval by the commission shall not be affected but such wages and benefit increases shall cease to be paid or provided effective upon the rejection of the agreement or arbitration award or upon adjournment by the legislature without acting upon the agreement or arbitration award.

Respectfully submitted,
LEONARD E. LINDQUIST
Special Master

Dated: March 23, 1981.

(Caption)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Minnesota State Board for Community Colleges, one of the defendants in this action, hereby appeals to the Supreme Court of the United States from the Order for Judgment, paragraphs 1, 2, and 3, entered in this action on March 31, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1253.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil Action No. 4-74-659

LEON W. KNIGHT, MORGAN KJER, DONALD A. DAHLIN, JAMES D. WALLACE, TERRENCE D. FLORIN, WILLIAM B. BAUMAN, HAROLD J. GARDNER, THOMAS J. PATIN, EUGENE D. MIELKE, DR. RICHARD A. THOMPSON, DAVID R. GROUT, JOAN M. FARKAS, GARY LEE NELSON, RONALD LIEVENSE, LUCILLE JOHNSON, VIRGINIA E. LANEGRAN, MAX A. MALMQUIST, RALPH G. POWELL, RICHARD D. ISENHART, CRESSTON GACKEL,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION; MINNESOTA EDUCATION ASSOCIATION; INDEPENDENT MINNESOTA POLITICAL ACTION COMMITTEE FOR EDUCATION; NATIONAL EDUCATION ASSOCIATION; JAMES A. NORMAN, individually and in his former official capacity as President, Minnesota Community College Faculty Association; JAMES K. DURHAM, individually and in his official capacity as Vice President, Minnesota Community College Faculty Association; ROBERT BELL, individually and in his official capacity as Secretary, Minnesota Community College Faculty Association; CALVIN MINKE, individually and in his official capacity as Treasurer, Minnesota Community College Faculty Association; RALPH S. CHESEBROUGH, individually and in his official capacity as Executive Secretary, Minnesota Community College Facul-

ty Association; DONALD HOLMAN, individually and in his official capacity as Minnesota Education Association Representative, Minnesota Community College Faculty Association; WILLIAM M. MONDALE, individually and in his former official capacity as President, Minnesota Education Association; JAMES ROSASCO, individually and in his former official capacity as President, 1973-74, Minnesota Education Association; ALFRED F. PROVO, individually and in his former official capacity as Treasurer, Minnesota Education Association; ALBERT L. GALLOP, individually and in his official capacity as Executive Director, Minnesota Education Association; FULTON B. KLINKERFUES, individually and in his former official capacity as President, Independent Minnesota Political Action Committee for Education; JANET R. MORGAN, individually and in her former official capacity as Vice President, Independent Minnesota Political Action Committee for Education; JOHN W. SCHUTT, individually and in his official capacity as Treasurer, Independent Minnesota Political Action Committee for Education; JAMES A. HARRIS, individually and in his former official capacity as President, National Education Association; HELEN D. WISE, individually and in her former official capacity as President, 1973-74, National Education Association; CATHERINE O'C. BARRETT, individually and in her former official capacity as President, 1972-73, National Education Association; TERRY E. HERNDON, individually and in his official capacity as Executive Secretary, National Education Association; SAM E. LAMBERT, individually and in his former official capacity as Executive Secretary, 1972-73, National Education Association; RAYMOND CRIPPEN, ROSEMARY McVAY, JOHN SONTOROVICH, HUGH V. PLUNKETT III, ARLEENE NYCKLEMOE, DOUGLAS

ALAN BRUCE, RONALD H. DENISON, EDWARD G. ZIEGLER, VAL BJORNSON, CHARLES SWANSON, individually; PHILLIP C. HELLAN, individually and in his official capacity as Chancellor of the Minnesota Community Colleges; JOHN F. HELLING, individually and in his official capacity as President, North Hennepin Community College; DALE A. LORENZ, individually and in his official capacity as President, Normandale Community College; NEIL CHRISTENSON, in his official capacity as President, Anoka-Ramsey Community College; WAYNE S. BURGGRAAFF, in his official capacity as Minnesota Commissioner of Finance; JAMES LORD, in his official capacity as Minnesota State Treasurer; PETER OBERMEYER, in his official capacity as Director of the Minnesota State Bureau of Mediation Services; WILLARD H. McGUIRE, in his official capacity as President, National Education Association; ROGER JOHNSON, in his official capacity as Chairman, Independent Minnesota Political Action Committee for Education; DONALD C. HILL, in his official capacity as President, Minnesota Education Association; TOYSE KYLE, ELMA PONTO, JOSEPH NORQUIST, NADINE CHASE, PAUL BRINKMAN, in their official capacities as members of the Minnesota State Board of Community Colleges,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Minnesota Community College Faculty Association, the Minnesota Education Association and the National Education Association, defendants in the above-captioned matter, hereby appeal to the Supreme Court of the United States from the final order the court entered in this action on March 31, 1982, and reaffirmed by an order entered on August 13, 1982. The parts of the court's orders appealed from are as follows:

(1) The court's ruling that an exclusive representative may not constitutionally retain exclusive control over selection of the membership of meet and confer committees (Sections 1, 2 and 3 of the court's Order for Judgment).

(2) The court's ruling that twenty per cent of plaintiffs' costs be taxed against the Minnesota Community College Faculty Association and the Minnesota State Board of Community Colleges.

This appeal is taken pursuant to 28 U.S.C. § 1253.

OPPENHEIMER, WOLFF, FOSTER, SHEPARD AND DONNELLY
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Date: October 12, 1982.

PUBLIC EMPLOYMENT LABOR RELATIONS ACT OF 1971

179.61 PUBLIC POLICY.

It is the public policy of this state and the purpose of sections 179.61 to 179.76 to promote orderly and constructive relationships between all public employers and their employees, subject however, to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety and welfare.

The relationships between the public, the public employees, and their employer governing bodies imply degrees of responsibility to the people served, need of cooperation and employment protection which are different from employment in the private sector. So also the essentiality and public desire for some public services tend to create imbalances in relative bargaining power or the resolution with which either party to a disagreement presses its position, so that unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary.

Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties; adequate means must therefore be established for minimizing them and providing for their resolution. Within the foregoing limitations and considerations the legislature has determined that overall policy may best be accomplished by:

(1) granting to public employees certain rights to organize and choose freely their representatives;

(2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing for written agreements evidencing the result of such bargaining; and

(3) establishing special rights, responsibilities, procedures and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer and the public at large.

179.63 DEFINITIONS.

Subdivision 1. For the purposes of sections 179.61 to 179.76 the terms defined in this section have the meanings given them.

Subd. 5. "Employee organization" means any union or organization of public employees whose purpose is, in whole or in part, to deal with public employers concerning grievances and terms and conditions of employment.

Subd. 6. "Exclusive representative" means an employee organization which has been designated by a majority of those votes cast in the appropriate unit and has been certified pursuant to section 179.67.

Subd. 10. "Professional employee" means:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes;

Subd. 15. "Meet and confer" means the exchange of views and concerns between employers and their respective employees.

Subd. 16. "Meet and negotiate" means the performance of the mutual obligations of public employers and the exclusive representatives of public employees to meet at reasonable times, including where possible meeting in advance of the budget making process, with the good faith intent of entering into an agreement with respect to terms and conditions of employment; provided, that by such obligation neither party is compelled to agree to a proposal or required to make a concession.

Subd. 18. The term "terms and conditions of employment" means the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits, and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean educational policies of a school district. The terms in both cases are subject to the provisions of section 179.66 regarding the rights of public employers and the scope of negotiations.

179.65 RIGHTS AND OBLIGATIONS OF EMPLOYEES.

Subdivision 1. Nothing contained in sections 179.61 to 179.76 shall be construed to limit, impair or affect the right of any public employee or his representative to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative if there be one;

nor shall it be construed to require any public employee to perform labor or services against his will. If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, shall have the right of expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or his representative so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

Subd. 3. Public employees who are professional employees as defined by section 179.63, subdivision 10, have the right to meet and confer with public employers regarding policies and matters not included under section 179.63, subdivision 18, pursuant to section 179.73.

Subd. 4. Public employees through their certified exclusive representative have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but such obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

179.66 RIGHTS AND OBLIGATIONS OF EMPLOYERS.

Subdivision 1. A public employer is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel. No public employer shall sign an agreement which limits the right of

the public employer to select persons to serve as supervisory employees or state managers pursuant to section 43.127 or requires the use of seniority in their selection.

Subd. 2. A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of the public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment, but such obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession.

Subd. 3. A public employer has the obligation to meet and confer with professional employees to discuss policies and those matters relating to their employment not included under section 179.63, subdivision 18, pursuant to section 179.73.

Subd. 7. The employer shall not meet and negotiate or meet and confer with any employee or group of employees who are at the time designated as a member or part of an appropriate employee unit except through the exclusive representative if one is certified for that unit or as provided for in section 179.69, subdivision 1, provided that this subdivision shall not be deemed to prevent the communication to the employer, other than through the exclusive representative, of advice or recommendations by professional employees, when such communication is a part of the employee's work assignment.

179.67 EXCLUSIVE REPRESENTATION; ELECTIONS; DECERTIFICATION.

Subdivision 1. Any employee organization holding formal recognition by order of the director or by employer voluntary recognition on the effective date of Extra Session Laws 1971, Chapter 33 under any law that is repealed by Extra Session Laws 1971, Chapter 33 is hereby certified as the exclusive representative until such time as it is decertified or another

representative is certified in its place pursuant to sections 179.61 to 179.76. Any teacher organization as defined by section 125.20, subdivision 3 who on the effective date of Extra Session Laws 1971, Chapter 33 has a majority of its members on a teacher's council in a school district as provided in section 125.22 is hereby certified as the exclusive representative of all teachers of that school district until such time as the organization is decertified or another organization is certified in its place pursuant to sections 179.61 to 179.76.

Subd. 2. An employee organization may be certified as the exclusive representative of public employees in an appropriate unit upon complying with and qualifying under the provisions of this section.

Subd. 3. The director may certify an employee organization as an exclusive representative in an appropriate unit upon the joint request of the employer and the organization if, after investigation, he finds that no unfair labor practice was committed in initiating and submitting the joint request and that the employee organization does in fact represent over 50 percent of the employees in the appropriate unit. The provisions of this subdivision shall not in any case reduce the time period or nullify any bar to the employee organization's certification existing at the time of the filing of the joint request.

Subd. 4. Any employee organization may obtain a certification election upon petition to the director wherein it is stated that at least 30 percent of the employees of a proposed employee unit wish to be represented by the petitioner. Any employee organization may obtain a representation election upon petition to the director wherein it is stated that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of the employees in the established unit wish to be represented

by the petitioner rather than by the currently certified representative. An individual employee or group of employees in a unit may obtain a decertification election upon petition to the director wherein it is stated that the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented.

Subd. 4a. The director shall not consider a petition for a decertification election during the effective term of a contract covering employees of the executive branch of the state of Minnesota except for a period for not more than 270 to not less than 210 days before its date of termination.

Subd. 5. The director shall, upon receipt of an employee organization's petition to the director wherein it is stated that at least 30 percent of the employees of a proposed employee unit wish to be represented by the petitioner or that the exclusive representative of a unit no longer represents the majority of the employees in the unit, investigate to determine if sufficient evidence of a question of represntation exists and hold hearings as necessary to determine the appropriate unit and such other matters as may be necessary to determine the representation rights of the affected employees and employer.

Subd. 6. In determining the numerical status of an employee organization for purposes of subdivisions 2, 3, 4, and 8, the director shall require representation authorization signatures of affected employees as verification of the statements contained in the joint request or petitions. Such authorization signatures shall be privileged and confidential information available to the director only and shall be dated.

Subd. 7. An employee organization shall be certified as the exclusive representative of an appropriate unit upon receiving

a majority of those votes cast in the appropriate unit at a certification election.

Subd. 8. The director shall issue his order providing for a secret ballot election by the employees in a designated appropriate unit. The election shall be held in the premises where those voting are employed unless the director shall determine that the election cannot be fairly held, in which case it shall be held at such a place as the director shall determine.

Subd. 9. The ballot in a certification election may contain as many names of representative candidates as have demonstrated that the candidate has 30 percent of the employees in the unit desiring it as their exclusive representative. The Ballots shall, in every case, contain an appropriate space for employees to indicate that no representation is desired.

Subd. 10. The director shall provide for and count absentee ballots in all elections.

Subd. 11. If no choice on the ballot receives a majority of those votes cast in the unit, the director shall conduct a run off election wherein the ballot shall contain only the two choices receiving the greater number of votes.

Subd. 12. Upon a representative candidate receiving a majority of those votes cast in a unit, the director shall certify that representative candidate as the exclusive representative of all employees in the unit.

Subd. 13. Upon a finding by the director of an unfair labor practice being committed by an employer or representative candidate or an employee or group of employees, which unfair labor practice affected the result of an election held pursuant to this section, the director may void such election result and order a new election.

Subd. 14. Upon the director certifying an exclusive representative, he shall not consider the question again for a

period of one year, unless the exclusive representative is decertified by a court of competent jurisdiction, or by the director as authorized by section 179.71.

179.73 POLICY CONSULTANTS.

Subdivision 1. The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of public services and which may assist public employers in developing their policies. It is, therefore, the policy of this state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters not specified under section 179.63, subdivision 18.

Subd. 2. The professional employees shall select a representative to meet and confer with a representative or committee of the public employer on matters not specified under section 179.63, subdivision 18 relating to the services being provided to the public. The public employer shall provide the facilities and set the time for such conferences to take place, provided that the parties shall meet together at least once every four months.

EMPLOYMENT CONTRACT
1981-83
Between
STATE OF MINNESOTA/
MINNESOTA STATE BOARD FOR
COMMUNITY COLLEGES
and
MINNESOTA COMMUNITY COLLEGE
FACULTY ASSOCIATION

ARTICLE I
RECOGNITION

The Employer recognizes the Association as the exclusive bargaining representative for all instructors, counselors, and librarians who work more than 14 hours per week or more than 35% of a normal work week and more than 100 work days per calendar year; excluding presidents, vice presidents, assistants to presidents, administrative assistants, deans, assistant deans, associate deans, directors, assistant directors, and all classified personnel. In accordance with the Bureau of Mediation Services Case No. 80-PR-1300A, the term "employee," when used hereinafter in the Contract shall refer to all employees of the designated bargaining unit, and reference shall include both male and female employees.

The Employer will not during the life of this Contract meet and negotiate or meet and confer relative to terms and conditions of employment with any employee or group of employees who are covered by this Contract except through the exclusive bargaining representative.

If titles or positions are created during the life of this Contract that are not listed above, the parties will meet and attempt to agree on the inclusion or exclusion of the new title

or position. If the parties cannot agree, the question will be submitted to the Director of the Bureau of Mediation Services for a determination of the inclusion or exclusion of such title.

ARTICLE V
MANAGEMENT RIGHTS

It is recognized that except as expressly stated herein the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the colleges in all of their various aspects, including but not limited to, the educational policies of the colleges; the right to select, direct, and assign employees; to schedule working hours; to determine whether goods or services should be made or purchased; to make and enforce reasonable rules and regulations affecting terms and conditions of employment that are uniformly applied and enforced in accordance with the provisions of the rules or regulations. Any term or condition of employment not specifically established by this Contract shall remain solely within the discretion of the Employer to modify, establish or eliminate.

ARTICLE VI
ASSOCIATION RIGHTS

Sec. 5. ASSOCIATION LOCAL COMMITTEES. The Association shall establish from one to six committees. Membership on each committee shall not exceed six. The number of committees may be limited to three at the College President's request or to a lesser number with Local Association agreement. Committees will be assigned responsibility for one or more of the following topic areas: Personnel, Student Affairs, Curriculum, Facilities, Fiscal Matters, and General Matters. The exchange of views process is recognized as being a significant and necessary part of the local campus operation.

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Section 6. ASSOCIATION STATE COMMITTEE. The State Association shall establish a committee of no more than eight members to meet and confer with the Minnesota State Community College Board for discussion and mutual exchange of ideas regarding statewide matters which are considered significant by the State Association or the Employer. The Employer shall provide the facilities and set the time for such conferences to take place, and such conferences shall be held at least three times a year. Agenda will be prepared and distributed one week in advance by the Board President or designee and will include all items submitted by the State Association. The agenda shall also include all items submitted by the Board President.

Section 7. ACCESS TO INFORMATION. Upon request, the Employer or the employer's designees agree to provide the Association at state and local levels information available to it concerning the professional staffing and financial resources of the Minnesota Community Colleges, including routine reports, registry of professional personnel, tentative budgetary requirements and allocations, agendas and minutes of Board meetings, names and addresses and position on the salary schedule of all employees in the bargaining unit, and such other information requested by the Association in contract matters or in the processing of a grievance.